DOCUMENT RESUME

ED 124 692 CE 007 233

AUTHOR	Collins, Wanda R.
TITLE	Supplemental Security Income: An Advocate's Handbook.
INSTITUTION	California Rural Legal Assistance, San Francisco.
SPONS AGENCY	Administration on Aging (DHEW), Washington, D.C.
PUB DATE	Jan 75
NOTE	197p.; For related documents, see CE 007 231-235
EDRS PRICE	MF-$0.83 Plus Postage. HC Not Available from EDRS.
DESCRIPTORS	Due Process; Federal Legislation; *Guaranteed Income; Instructional Materials; *Law Instruction; Legal Aid; *Older Adults; *Paraprofessional Personnel; *Welfare Services
IDENTIFIERS	*Legal Assistants; SSI; *Supplemental Security Income

ABSTRACT

The handbook is part of a series on legal services for the elderly which can be provided by senior citizens as paralegals. It is designed to be used in training and Security Income program (SSI). The 14 sections provide discussion, reference to basic sources, and advocate tips for: (1) SSI and the income maintenance system, (2) an overview of SSI, (3) the application process, (4) early cash payments, (5) proof of age, (6) proof of blindness, (7) proof of disability, (8) the impact of marital status, (9) the income test, (10) the resource test, (11) other major eligibility conditions, (12) benefit payments, (13) post eligibility events, and (14) the appeals process. The basic sources used for studying the SSI are listed and a glossary is provided. (EC)

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SUPPLEMENTAL SECURITY INCOME

AN ADVOCATE'S HANDBOOK

WANDA R. COLLINS, M.S.W.

JANUARY 1975

This Handbook was prepared pursuant to a grant from the Administration on Aging, through the National Paralegal Institute to the Senior Citizens Law Program, C.R.L.A., 942 Market St., Suite 606, San Francisco, California 94102.

CE007238

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Changes on Page 133

Example #2, Line 2 - She earns $660 ($220 per month)

Example #2, Line 3 - Jane's total for the month

$ 78.50 SSI Payment
220.00 Earned Income
$298.50 Total Income

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INTRODUCTION TO THE HANDBOOK

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INTRODUCTION TO THE HANDBOOK

How To Use It

The purpose of this Handbook is to give paralegals in legal services offices and lay advocates in social service and health agencies a basic understanding of the Supplemental Security Income program. Information has been gathered from a variety of sources: the statute and regulations, Social Security documents, discussions with persons in the Social Security Administration and other persons engaged in helping the elderly, blind and disabled poor. Manuals from the National Senior Citizens Law Center and the Columbia Center on Law and Poverty have also been useful.

This Handbook is designed to be used in training and also as a reference book. It is divided into fourteen chapters. The table of contents lists not only the chapters, but also the major subsections within each chapter, together with the appropriate page number. There are frequent citations to the basic source materials, so that more information can be obtained about a particular issue. Advocate tips are interspersed throughout the Handbook.

Since it is important to have access to the basic source materials, those are described on the next page, and information given as to where to find them.

And finally, there is a glossary at the end of this Introduction.

The Basic Source Materials

The basic source materials are:

1. Statute: Title 16 of the Social Security Act codified in Volume 42, U.S. Code Annoted, at §1381 and following.
2. Regulations: All of the SSI regulations will eventually be published in Title 20 of the Code of Federal Regulations at §416 and following.
3. Social Security Claims Manual: Most of the information about the SSI program will be found in parts 12 and 13 of the Claims Manual. However, some of the information is found in other parts of the Manual. This is the permanent policy and operational guide used by SSA personnel.
4. SSI Handbook: An operational and supposedly temporary set of guidelines for District Office personnel. Quite often it is the only reference used by SSA personnel in the District Office.

The source materials are listed in the order of authority; that is the statute is the highest level of authority and the SSI Handbook is the lowest level. Thus if confronted with SSA personnel who cite the Handbook, you can cite the Claims Manual, the regulations, or the statute, all of which should have more weight than the Handbook.

The Claims Manual and the SSI Handbook can be read at the Social Security District Office. You can get your own copy of the Claims Manual and updates for one year for $15 from:

The National Senior Citizens Law Center
1709 West 8th Street, Suite 600
Los Angeles, California 20017
(213) 483-3990

Every legal service office gets one copy free.

The regulations are not yet finalized and are to be found in different issues of the Federal Register. A copy of most of them can be secured for $3.50 from:

The National Clearinghouse for Legal Services
500 North Michigan Avenue, Suite 2220
Chicago, Illinois 60611

The statute P.L. 92-603 in addition to being in Volume 42 of the U.S. Code, can also be found in Volume 1 of the Compilation of Social Security Laws. Volume 1 costs $3.45 and can be secured from:

The Superintendent of Documents
The Government Printing Office
Washington, D.C. 20420

The amendments - P.L. 93-66, P.L. 93-233 can be secured free from:

The House Documents Room
U.S. Capitol
Washington, D.C. 20515

Additional copies of this Advocate's Handbook can be secured from:

National Paralegal Institute
2000 P Street, N.W., 6th Floor
Washington, D.C. 20036

Glossary

AA: Aid to the Aged - the former State welfare program for the aged.

AB: Aid to the Blind - the former State welfare program for the blind.

AD: Aid to the Disabled - the former State welfare program for the disabled.

AFDC: Aid to Families with Dependent Children - the current State welfare program for children in need.

ANC: Aid to Needy Children - another name for AFDC.

BDI: Bureau of Disability Insurance, Social Security Administration.

BHA: Bureau of Hearings and Appeals, Social Security Administration.

Benefit payment: The actual amount of money that a particular claimant receives.

Benefit standard: The maximum amount of money that any claimant can receive.

CFR: Code of Federal Regulations.

CM: Claims Manual - the basic operational and policy manual of the SSA.

Child: An individual who is neither married nor the head of a household, and who is: 1) under age 18, or 2) under the age of 22, and a student regularly attending school.

Claimant: A person who has applied for SSI benefits and/or is receiving them.

Convertee: A person who was on the old State welfare program at the time SSI came into being; thus the person was converted from the welfare roles to the SSI roles.

Countable income: Income which remains after all excluded income has been subtracted from it.

Countable resources: Resources which remain after all excluded resources have been subtracted from it.

Couple: Two persons legally married or holding themselves out to the community as being married; this status continues until they are divorced or dead or have been separated for six months.

DI: Disab ility Insurance (See OASDI).

DILS: Disability Insurance Letters - guidelines for use by the SA-DDU.

DO: District Office, Social Security Administration - the basic services unit of SSA.

Deeming: Attributing income or other resources to a person from another individual, even if that income/resources are not available to the first person.

Eligible couple: Two eligible individuals who are married as defined by SSA and have not been separated for six months.

Eligible individual: A person who meets all the requirements for SSI.

Eligible spouse: A person who meets all the requirements for SSI, and is the wife or husband (as determined by SSA) of an eligible individual.

Essential person: A person whose needs were included in the benefit payments of a claimant under the old welfare programs.

Grandfathering: Protecting the rights of a claimant who was converted from the old welfare programs to SSI.

Holding out: SSA defines two individuals of the opposite sex who live together and hold themselves out to the community as being married, as being in a holding out situation, and therefore considered married.

Income: Assets or things of value that a person receives during a calendar quarter.

OAA: Old Age Assistance - another name for AA.

OASDI: Old Age, Survivors and Disability Insurance - the basic income maintenance program administered by SSA.

Parent: A natural, adoptive or step-parent.

RSDI: Retirement, Survivors and Disability Insurance - another name for OASDI.

Resources: Assets or things of value a person has at the beginning of a calendar quarter.

SA: State Agency - the State Agency, usually Vocational Rehabilitation, which has responsibility for medical determinations in both the SSI and the OASDI programs.

SA-DDU: State Agency-Disability Determination Unit - Same as SA.

SGA: Substantial gainful activity - disabled person whose work can be considered as engaging in substantial activity and therefore not eligible for benefits, even though their disability continues.

SSA: Social Security Administration - administers OASDI, SSI and the Medicare programs.

SSI: Supplemental Security Income - federal welfare program for the blind, disabled and aged.

SSP: State Supplementary Payments - payments made by the States over and above the basic SSI payment.

Spouse: Husband or wife (as defined by SSA) of an eligible individual, who has not been separated for six months; husband or wife (as defined by SSA) of parent of an eligible child.

USCA: U.S. Code Annotated.

CHAPTER 1 – SSI AND THE INCOME MAINTENANCE SYSTEM

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CHAPTER 1

SSI AND THE INCOME MAINTENANCE SYSTEM

Overview

This Chapter provides a framework for understanding how the Supplemental Security Income program fits into the income maintenance system in this country. There is no single program which provides a coordinated, comprehensive approach to the problem of income maintenance. Instead there are a variety of programs, with a bewildering array of eligibility requirements and payment levels.

One way to group the programs is according to whether the program is linked to work or to need. The bulk of the programs are linked to work; that is, to qualify a person has to have worked for a stated period of time. However, some of the programs are linked to need; that is, to qualify a person must prove need.

Historically, the public has viewed those two groups of program benefits quite differently. Although benefits in both are a legal right, benefits based on need—commonly called welfare—are often considered a privilege. Persons receiving those benefits are sometimes viewed as morally suspect. In contrast, benefits linked to work are considered earned rights. Hence the person receiving such a benefit takes on additional moral virtue.

The major income maintenance programs, separated into the two groups, are listed below:

Work-linked Programs

...Old Age, Survivors and Disability Insurance

...Black Lung Benefits

...Railroad Retirement and Unemployment Act

...Federal, State, and local government insurance programs

...State Unemployment Insurance

...State Disability Insurance (few states)

...State Workmen's Compensation

Need-linked Programs

...Supplemental Security Income

...Aid to Families with Dependent Children

...General Assistance or General Relief

Note: Veterans Benefits are not in either group. They are available to a special status group and provide money payments in the form of compensation for service connected illnesses or injuries, and pensions for elderly veterans in need.

It is clear from the list that the Supplemental Security Income program is based on need. It is a federally administered

welfare program, which, beginning January 1, 1974, supplanted the state administered welfare programs for the aged, blind and disabled. The Social Security Administration is responsible for administering the SSI program, and also for administering the largest and best known work-linked program, called Old Age, Survivors and Disability Insurance (OASDI). As a matter of fact, Congress viewed the SSI program as being supplemental to the OASDI program.

In order to have a better understanding of the implications of this change, both for the Social Security Administration and for the welfare system, it is important to look at:

...the Social Security Administration and OASDI;

...the old welfare system.

The Social Security Administration and OASDI

The Social Security Act of 1935, as amended, set up what is considered the key income maintenance program in this country. It is known variously as Old Age, Survivors and Disability Insurance (OASDI) or Retirement and Survivors Disability Insurance (RSDI), or just plain Social Security. For purposes of simplicity, and because the acronym has been used for such a long time, in this Handbook the program will be referred to as OASDI.

The administration of the program is through a national network of District Offices of the Social Security Administration.

The financing comes through one compulsory contribution from employers and one from employees. Those contributions are placed into two trust funds--one for retirement, and one for disability--and the costs of administration, as well as the cost of the benefit payments, are paid from those funds.* The level of contribution and the level of benefit payments are set by Congress.

---

* Although OASDI supposedly is an insurance program, it is not based on acturial principles. Thus the Social Security Advisory Council has recently suggested that general revenue funds be used to keep the trust funds solvent.

The program has three components:

...retirement insurance, initiated in 1935;

...survivors insurance, initiated in 1939;

...disability insurance, initiated in 1956.

Retirement Insurance

The retirement program is not only the oldest, but also the largest of the three programs. For example, in December 1973 18.2 million retired workers and their spouse received benefits, in contrast to 2.4 million disabled workers and their spouse.

It is also the easiest of the programs to administer. As a matter of fact, the Social Security Administration has developed a sophisticated money payment mechanism for dealing with the high volume of claims under the retirement insurance program. This program lends itself to mass computerized techniques because the eligibility requirements are simple, objective and few in number.

Survivors Insurance

The survivors insurance program is also a relatively easy program to administer. It is a small program, and provides cash payments for the family of the insured worker who dies.

Disability Insurance

The disability insurance program is the newest, and although not large, is the most difficult to administer.

The determination of insured status is simple, and handled much as for the retirement program. However, disability determination is difficult for two reasons:

...the definition of disability is vague and subjective;

...the determination is made by a State Agency under contract to the Social Security Administration.

Thus in addition to a complex definitional problem, there is also a complicated two-agency administrative structure.

Note: This same definitional and administrative structure will operate in the SSI program with regard to disabled claimants.

The Old Welfare System

The old welfare system was comprised of 55 different programs administered by the 50 States and territories of the U.S. The programs were mandated by the Social Security Act, but because of State Administration, and the fact that part of the money came from States on a matching basis, the States were allowed broad discretion in setting eligibility requirements and payment levels.

Not all needy persons were eligible for benefits, just those who were in certain categories, as follows:

...Aid to the Aged;

...Aid to the Disabled;

...Aid to the Blind;

...Aid to Families with Dependent Children.

Those persons who were needy but did not fall into one of those groupings, were left to the generosity of local government. No federal money was to be available for those persons who were considered "able-bodied" and thus able to support themselves. This philsophy has its roots in England's Elizabethan Poor Law. Because the local units of government have the least access to tax revenues, it is not surprising that these payments are very low. For example, in San Francisco a person on general assistance receives about $80 a month.

Over the years there have been many schemes advanced for federalizing and standardizing the welfare programs. Finally, in October 1972 Congress passed Public Law 92-603 which federalized the welfare program for three categories: the blind, the disabled, and the aged. In addition, for the first time, blind and disabled children were eligible for benefits.

Congress called this new program Supplemental Security Income, because it was viewed as supplementing the basic work-related insurance program, OASDI. Both SSI and OASDI were to be administered by the Social Security Administration. Thus the welfare program for the blind, the disabled, and the aged would gain new respectability because of its name change and its association with the Social Security Administration.

It is important to keep perspective when considering the impact of adding this program to the Social Security Administration. For example, in January 1974, 33.2 million persons received benefit payments from the Social Security Administration. Of that number, only 3.3 million were receiving SSI benefits, about 10% of the total.

What happened to the rest of the welfare system? Aid to Families with Dependent Children continues as it was before SSI - 55 programs, with different eligibility requirements, and benefit payment levels. General assistance or general relief continues to be the responsibility of local government.

Before concluding that everything is great now that the SSI program is with the Social Security Administration, it should be clear that the core of the welfare system - the means test - remains. The means test is the scrutiny of each person's resources to see if he has the means to support himself. It is this process which most people find so humiliating and demoralizing.

While the means test might be a humiliation for those receiving benefits, it is a nightmare for administrators. The case-by-case scrutiny of complex factors is time-consuming and expensive. It is also a headache because most applicants are in dire need. Thus the Social Security Administration could take whatever time was needed to process applications for OASDI, safe in the knowledge that emergency needs would be handled by the local welfare department. Now, with the welfare program for the blind, disabled and aged under SSA, that responsibility cannot be delegated elsewhere.

Thus the basic advantage to placing SSI within the Social Security Administration is because it reduces the stigma attached to welfare. However, the disadvantage clearly is that SSA is set up for mass handling of claims, with no time constraints. SSA has no experience in being the agency of last resort for poor people, nor does it have experience in using the complex means test. Many of the problems which have arisen in this first year of operation are directly attributable to those factors.

It is obvious to anyone who has observed the operation of the SSI program that there is an urgent need for advocates outside of the Social Security system who can help claimants apply for and receive the correct benefit payment, and to help them stay eligible for that payment. It is hoped that this Handbook can help in that process.

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CHAPTER 2 - OVERVIEW OF SSI

WHAT IS SSI?

SSI is a cash benefit program for the aged, and for blind or disabled persons of any age, who do not have enough money to live on.

WHO CAN GET IT?

A person who is:

...age 65 or over, or

...blind, or

...disabled;

AND

Has limited means, defined as:

...countable income below $146 monthly for an individual,
$219 monthly for a couple;

...countable resources at or below: $1500 for an individual
$2250 for a couple;

AND

Meets other conditions:

...is a resident of the U.S.:

...is a U.S. Citizen or alien lawfully residing in the U.S.;

...files for all other benefits to which he may be entitled;

...accepts vocational rehabilitation if disabled or blind;

...accepts treatment if certified an alcoholic or drug addict;

...is not in a public institution.

HOW MUCH CAN A PERSON GET?

Up to $146 per month for an individual,

up to $219 per month for a couple.

WHAT IS GRANDFATHERING?

Protecting rights of claimants who were converted from State Welfare Programs to SSI.

WHO IS GRANDFATHERED?

Aged and blind who were on State rolls December 1973;

Disabled who were on State rolls December 1973, and prior to June 1973.

WHAT ARE THE GRANDFATHERING PROVISIONS?

State standards in the October 1972 State Plan can be used:

...to define blindness and disability;

...to allow a higher resource limitation;

...for the blind only, to allow a higher income disregard;

State standards in the June 1973 State Plan can be used:

...to provide for the needs for an essential person in the SSI benefit payment;

...to provide State Supplementary Payments to those who would receive less income under SSI.

WHAT ARE MANDATORY STATE SUPPLEMENTARY PAYMENTS?

States must make additional payments to grandfathered claimants so their income under SSI will not be less than it was under the old State welfare program.

WHAT ARE OPTIONAL STATE SUPPLEMENTARY PAYMENTS?

States may make additional payments over and above the basic SSI payment to all claimants.

WHO ADMINISTERS THE SSI PROGRAM?

The Social Security Administration.

WHO ADMINISTERS THE STATE SUPPLEMENTARY PAYMENTS PROGRAM?

Either the Social Security Administration or the State government, at the option of the State.

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CHAPTER 3

THE APPLICATION PROCESS

Overview

This Chapter provides an understanding of the application process from two standpoints:

...How to Apply

...How Claims are Processed.

How to Apply

The application process begins at the point when a person or his representative calls, writes or visits the local District Office (DO) of the Social Security Administration and states that he wants to apply for SSI benefits. If the person visits the office he is assisted in filling out the application forms. If the person calls or writes, he is sent an application form attached to a dated notice.

If that person completes the application form and returns it to the District Office within 30 days of the date of the notice, or of the visit to the office, benefits can begin as of the first of the month in which that initial contact was made. If he does not complete filling it out within the 30 days, benefits begin as of the first of the month in which the forms are filled out.

There are three application forms to deal with different situations, as follows:

...Form SSA-8000--Application for Supplemental Security Income (Couple);

...Form SSA-8001--Application for Supplemental Security Income (Individual);

...Form SSA-8002--Application for Supplemental Security Income (Individual with Spouse).

It is very important to insist on filling out an application form. District Office personnel are instructed by the Handbook (§1420) to make an informal denial (disallowance) if a person comes in to apply for SSI and appears to be "clearly ineligible" and if that person "readily accepts the explanation of why he is ineligible." If that happens, he has no right to appeal and the application process would have to begin all over again.

In addition to properly filling out the application forms, the claimant must provide evidence that he meets eligibility criteria. The kind of proof needed will be discussed in the subsequent chapters which deal with eligibility criteria. Note: The whole process will be speeded up if claimant supplies the necessary evidence quickly.

Advocate Tip

...Make sure the client asks for an application form, even if there is some doubt as to his eligibility;

...Make sure the application form is filled out properly;

...Help to secure the necessary evidence.

How Claims are Processed

The District Office (DO) personnel have responsibility for determining all non-medical eligibility criteria, such as age, income, resources, citizenship, etc. The District Office does not have authority to formally determine blindness or disability, but may make a temporary decision in the limited cases cited on pages 28 and 30 for the purpose of the emergency advance and/or presumptive disability determinations. All formal determinations as to blindness or disability are made by the State Agency Disability Determination Unit (SSA-DDU) under contract with the Social Security Administration.

However, the District Office does have impact in terms of which disabled person get to the State Agency. For example, when a disabled person who is working applies, the DO explores how much he is making and generally, if the amount is over $200, makes an informal disallowance, on the basis that the person is engaged in substantial gainful activity (SGA). (See page 41 for further discussion of what is considered SGA) That person has no appeal rights, and of course, he is never referred to the State Agency for determination as to his disability.

After the District Office, and in the case of the blind and disabled, the State Agency, complete their investigation, the data is sent to SSA's Central Office. That office then notifies

the claimant as to the decision on his claim, and if he is eligible, directs the Treasury Department to issue a check.

The functions of the three offices are summarized in the chart on page 25.

It is significant to note that the only place the claimant is seen in this entire process is at the District Office. It is particularly unfortunate that the decision-makers in the State Agency never see the claimant. (This issue will be discussed further on page 47.)

Another problem, and one which is of rather major proportions, has been the length of time taken in the processing of applications. There is no statutory time limit, and the disabled, in particular, have had long waits. For example, in June 1974 in Region IX, one-third of the disabled applications had not been processed three months after applications. Undoubtedly one of the reasons for this delay is the two level decision process that is needed. Another is that a new computer system was introduced into the entire operations of the Social Security Administration around the time SSI was added as a new program. There have been numerous problems with the computer rejecting applications for known as well as unknown reasons. In addition, harassed staff in the District Offices will often put those rejected applications aside, and work on the new applications, and those that are not troublesome.

Advocate Tip

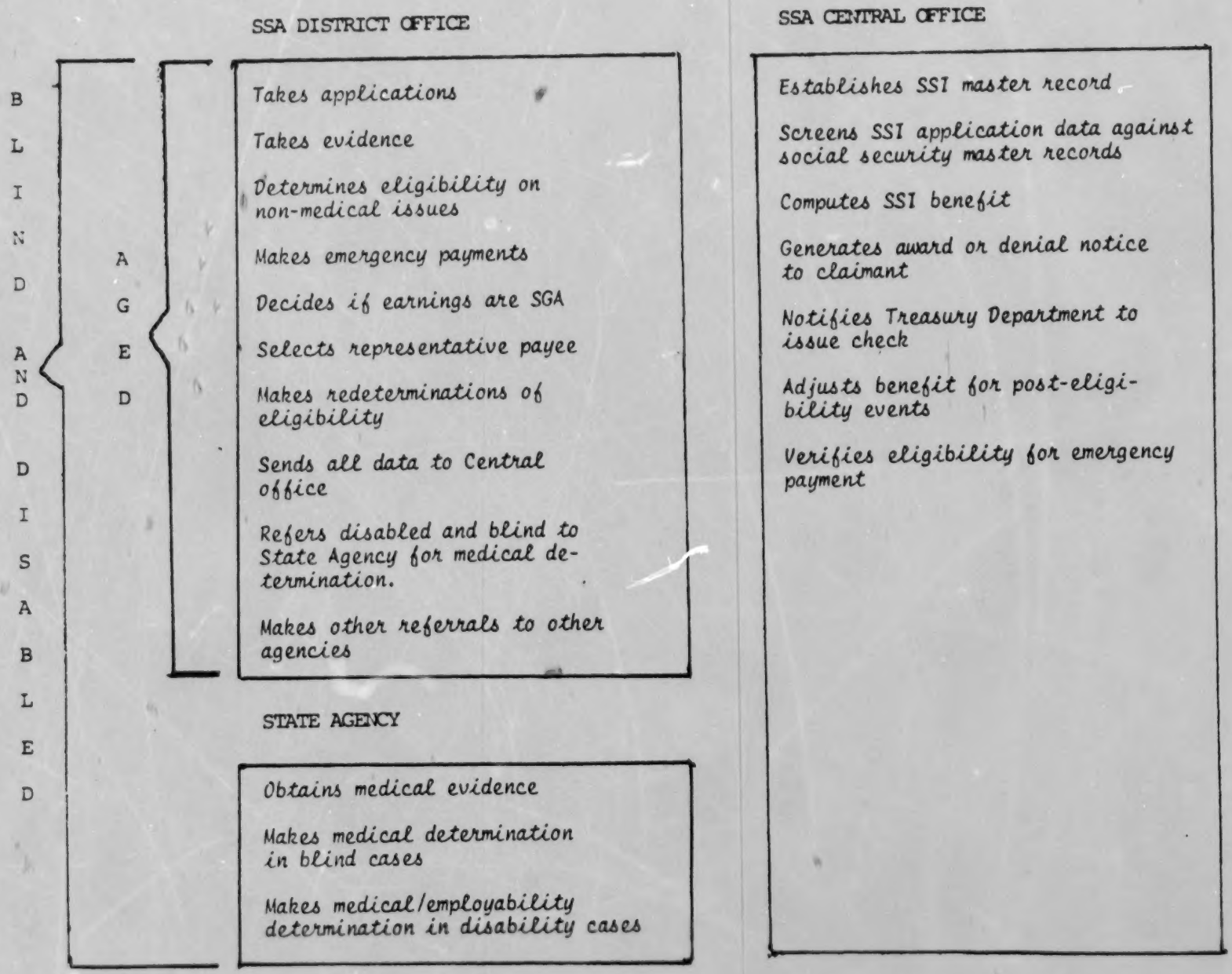
...Keep in touch with the DO to make sure the process is moving;

...Insist on knowing the reasons for the delay so the application won't be forgotten;

...Provide promptly whatever information might be missing;

...Suggest to the client that he contact his Congressman if the delays continue. The practice under OASDI is to give priority to those applications, which are called "Congressionals."

...Urge the client to formally apply, if denied informally on the basis of SGA.


SSA DISTRICT OFFICE
SSA CENTRAL OFFICE
BLIND AND DISABLED
AGED
Takes applications
Takes evidence
Determines eligibility on non-medical issues
Makes emergency payments
Decides if earnings are SGA
Selects representative payee
Makes redeterminations of eligibility
Sends all data to Central office
Refers disabled and blind to State Agency for medical determination.
Makes other referrals to other agencies
STATE AGENCY
Obtains medical evidence
Makes medical determination in blind cases
Makes medical/employability determination in disability cases
Establishes SSI master record
Screens SSI application data against social security master records
Computes SSI benefit
Generates award or denial notice to claimant
Notifies Treasury Department to issue check
Adjusts benefit for post-eligibility events
Verifies eligibility for emergency payment

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CHAPTER 4

EARLY CASH PAYMENTS

Overview

There are three provisions for the payment of cash before the formal determination of eligibility is completed. One is for the aged, blind and disabled, and is called the emergency advance. The second is for the disabled only, and provides up to three full months of benefit payments on the basis of "presumptive disability". The third is for the aged only, pending final verification of age.

42 U.S.C.A. §1383(a)(4)
20 C.F.R. §416.520

The Emergency Advance

By definition all the people applying for SSI are in need. It is fortunate, in view of the time delays, that the statute provides for an emergency advance payment. This advance is available one time only at the time of application. This includes persons converted from the old State Programs who were not getting their benefit payments, as well as new applicants.

The amount of the advance is up to $100 for an individual ($200 for a couple), but in no case more than the amount of the first month's benefit payment. The advance is then subtracted from the first month's payment, once the person begins receiving benefits. If the person is found ineligible, he must pay back the advance, unless he is found ineligible because of disability.

In order to secure this emergency advance, the claimant must be:

...presumptively eligible, and

...faced with a financial emergency.

Presumptively Eligible

To be considered presumptively eligible the claimant/applicant must:

> ...present strong evidence of the likelihood of meeting the income and resources tests of eligibility, categorical eligibility (age, disability, or blindness), or technical eligibility (U.S. residency or citizenship, or alien status). [20 C.F.R. §416.520(b)(2)]

As already discussed, the District Office has responsibility for determining all non-medical eligibility criteria. For purposes of the emergency advance, the District Office may also make a tentative medical decision in the following cases:

...if the claimant is totally blind;

...if the claimant has two limbs amputated;

...if the claimant has a leg amputated at the hip;

...if the claimant is totally deaf.

With such narrow criteria, it is not surprising that few disabled or blind claimants receive an emergency advance.

If the claimant does not have one of those disabilities, but still is in dire need, the District Office flags the case and sends it to the State Agency. Basically the flagging means that the claimant is:

...presumed to have met the other eligibility criteria, and

...is faced with a financial emergency.

The State Agency is supposed to give priority to those cases.

Faced with a Financial Emergency

The regulations define the term as meaning:

> ...insufficient income or resources to meet an immediate threat to health and/or safety, such as a lack of food, clothing, shelter, or medical care.
>
> [20 C.F.R. §416.520(b)(3)]

The Claims Manual (§13170) gives some examples:

> ...eviction for non-payment of rent, lack of money for fuel, immediate need for medical care, and loss of housing or personal property occasioned by a disaster.

This regulation has been so stringently applied that not many emergency advances were being made. Hence on August 29, 1974, SSA in Claims Manual Transmittal Sheet No. 3345 temporarily modifies the financial emergency provision, so that <u>any</u> claimant found presumptively eligible for SSI who expresses an immediate need for funds can be given an advance payment without being required to establish that he is "without money, income or resources."

Advocate Tip

...Inform the client community about the existence of the emergency advance;

...Represent clients in their request for such a payment;

...Press for the full amount.

42 U.S.C.A. §1383(a)(4)(B)
20 C.F.R. §416.951-3

Presumptive Disability Payment

In addition to emergency advance payments, which are made available to every claimant, the statute provides for full benefits to be paid to:

> ...an individual applying for such benefits on the basis of disability for a period not exceeding three months prior to the determination of such individual's disability, if such individual is presumptively disabled, and is determined to be otherwise eligible for such benefits.

The disabled person must formally meet the non-medical eligibility criteria, not just be presumptively eligible, as with the emergency advance.

Although the vast majority of the cases would simply be flagged as meeting the non-medical eligibility criteria and then forwarded to the State Agency, the District Office can, as with the emergency advance, find disability if the claimant has one of the following:

...total deafness;

...two limbs amputated;

...one leg amputated at the hip.

Even if such a temporary determination is made, the District Office would immediately forward the case to the State Agency for formal determination of disability. The DO would also initiate the three months payment with the Central Office.

The State Agency can itself initiate exploration of presumptive disability in the following cases:

...Cases that are flagged by the DO as meeting the financial conditions for emergency advance payment (and in which the DO is unable to make a finding of presumptive disability).

...Cases where the formal disability decision is unduly delayed.

...Cases in which medical evidence received during the course of development permits the DDU evaluation team to make a judgment that the total evidence (though short of that needed for a formal determination) is sufficient to make a presumptive disability decision.

Cases that are found by the State Agency to be presumptively disabled are handled as follows:

...If the case has been flagged by the DO as meeting the financial conditions, the DO is immediately notified by telephone of the decision, and he makes both the emergency advance payment and provides for the beginning of benefit payments.

...If the case has not been flagged for emergency payment, the State Agency proceeds to initiate payment of benefits. Completion of formal processing continues.

[SSA Disability Insurance Letter No. 111-12; 2-1-74]

How many people have actually been designated "presumptively disabled"? In California, out of 55,000 disabled applicants, only 123 persons were so designated in the first five months of operation of the program. Since the processing of applications for disabled persons takes so long, it is unfortunate that this provision of the law is not utilized more often by the State Agency.

Advocate Tip

...Inform the client community of the existence of this form of early payments;

...Urge the District Office personnel to flag cases for the State Agency;

...Begin to establish a relationship with the State Agency and push for a speeded up process of determining disability and for a more liberal use of the presumptively disabled provision.

Aid Pending for the Aged

It is much easier to prove age, than it is to prove blindness or disability. However, there will be a few situations in which acceptable proof might be difficult to ascertain. Benefits can be paid pending final verification in the following circumstances:

> ...Where documentary evidence of age recorded at least 3 years before the application is filed, which reasonably supports an aged applicant's allegation as to his age, is submitted, payment of benefits may be initiated even though additional evidence of age may be required.
> [20 C.F.R. §416.806]

If the applicant is subsequently found to be ineligible, he is liable for refund of the overpayment of benefits.

Advocate Tip

...Secure the necessary documentation;

...Persuade the DO that the evidence submitted is sufficient to establish aid;

...Suggest that if a question still remains, aid be given pending further documentation.

CHAPTER 5 – PROOF OF AGE 34

42 U.S.C.A. §1382c(a)(1)(A)
20 C.F.R. §416.801-6

CHAPTER 5

PROOF OF AGE

A claimant, if he is neither blind nor disabled, must prove that he is 65 years of age or older in order to receive SSI.

The best proof is a public or religious record of birth recorded before the claimant was 5 years old. If such a record is not available, usually three other documents, such as the following, will be acceptable:

...School records
...Census records
...Bible or other family record
...Church record of baptism or confirmation in youth or early adult life
...Insurance policy
...Marriage record
...Employment record
...Labor record
...Fraternal organization record
...Military record
...Voting record
...Delayed birth certificate
...Birth certificate of applicant's child
...Physician or midwife's record of birth
...Immigration record
...Naturalization record
...Passport

The general rule for evaluating evidence of age is that the older the evidence, the better.

A person who is 68 years of age or older can submit any documentary evidence that is at least three years old, which supports his allegation as to his age. And of course, anyone who is already receiving SSA benefits or Medicare based on age 65 would automatically be eligible based on age.

In the event that SSA considers the proof not convincing, benefits can be paid pending final verification of age as already discussed in the previous chapter.

Advocate Tip

...Help secure the necessary documentation;

...If final proof is not available, argue that aid should be paid pending that final verification.

CHAPTER 6 - PROOF OF BLINDNESS 36

42 U.S.C.A. §1382c(a)(2)
20 C.F.R. §416.901(d)

CHAPTER 6

PROOF OF BLINDNESS

A "grandfathered" claimant is considered blind if he:

...meets the definition under a State Plan in effect October 1972;

...received aid under such plan in December 1973;

...is continuously blind as so defined.

A new applicant is considered blind if he:

...has central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered as having central visual acuity of 20/200 or less.

Proof must be provided by a physician skilled in disease of the eye or an optometrist and should include measurements of visual acuity and visual fields. The State Agency-Disability Determination Unit may require additional consultative examinations, at government expense. The applicant must comply with such requests.

There is no work capacity/employability test, as with disability. This differs from blindness under OASDI, where such a test is utilized. Some DO personnel familiar with the OASDI definition of blindness, have been known to apply the same test to

claimants under SSI. Be particularly alert with claimants who may be working, since they could be informally disallowed on that basis alone.

Advocate Tip

...Secure the necessary medical documentation;

...Watch that SSA does not apply the work test;

...If the applicant is not eligible under the blindness test, see if the eye problem, in connection with other physical and/or emotional problems, might make him eligible for aid under the disability provisions.

CHAPTER 7 – PROOF OF DISABILITY

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42 U.S.C.A. §1382c(3)&(4)
20 C.F.R. §416.901-939

CHAPTER 7

PROOF OF DISABILITY

Overview

A "grandfathered" claimant is considered disabled if he:

...meets the definition of disability in the State Plan in effect in October 1972;

...received aid in December 1973 and for at least one month prior to July 1973;

...is continuously disabled as defined.

A new applicant is considered disabled if he:

...is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment;

...which impairment can be expected to last at least 12 months, or to result in death;

...or in the case of a child under the age of 18, if he suffers from any medically determinable physical or mental impairment of comparable severity.

This Chapter is only concerned about the definition of disability for new applicants. Note that it is identical to the definition used in Disability Insurance under OASDI. Proof is difficult, because of the vague and subjective wording of both the statute and the regulations. Generally the agency interpretation in Disability Insurance has been narrow and restrictive,

as spelled out by the Disability Insurance Letters (DILS), which are issued by the Social Security Administration for the guidance of the State Agency-DDU. The general philosophy seems to be "when in doubt, deny". * For example, in the year 1972, only 43% of the applications for Disability Insurance benefits were allowed. This seems close to the figure secured informally for the first five months of operation of the SSI program in California. Out of 53,974 applications for SSI disability benefits, 23,085 were allowed, approximately a 45% allowance rate.

The experience of appeals from decisions on Disability Insurance seems to indicate that the interpretation is perhaps too narrow, since in 1972 about 50% of the disability cases that reached the hearing level were reversed.

Still the problem remains of trying to present the best possible proof at the earliest stage of the process, preferably at the time of application and preferably with the help of an advocate. Obviously if the claimant loses at any stage, resort should be made to the appropriate level of the administrative appeals process. (See Chapter 14)

*For an analysis of the way disability claims under OASDI are handled, see Social Security Disability and Mass Justice, by Robert G. Dixon, Jr., Praeger Publishers, c. 1973.

There are basically two tests which must be passed in order to be eligible for benefits:

...a medical test;

...a work capacity/employability test.

Before examining the evidence required for each test, it is important to understand the relevance of "substantial gainful activity".

Advocate Tip

...For help in proving disability, get the Handbook "Representation at a Social Security Hearing: Focus on Disability" and accompanying film from the National Paralegal Institute, 2000 P Street, N.W., 6th Floor, Washington, D.C. 20036.

Substantial Gainful Activity (SGA)

Earnings, either at the application stage or later, raise the question as to whether the claimant is engaged in substantial gainful activity. As already noted on page 22, if the claimant is making over $200 a month, the chances are high that such an application will be informally disallowed at the District Office level. Keep in mind that the work does not have to be full-time. Although a number of criteria are supposedly to be looked at in evaluating earnings, the regulations state clearly that the amount of money earned is the most important one, as follows:

> ...earnings at a monthly rate in excess of $200 would be proof that an individual can engage in substantial gainful activity, unless there is proof to the contrary;
>
> ...earnings at a monthly rate between $130 and $200 would be evaluated together with other factors, such as his medical impairment, work history, etc.;
>
> ...earnings at a monthly rate below $130 would not be proof that an individual can engage in substantial gainful activity.
>
> [20 C.F.R. §416.934]

One exception to the rule would be in the case of subsidized employment. The most obvious example is a sheltered workshop situation. Another would be a situation where there is a discrepancy between the value of the services and the amount of the pay, or

where an individual must get an extraordinary amount of help from others in doing his work. (Keep in mind that even if a claimant is in a sheltered workshop situation, his performance could be evaluated and if it compares reasonably well to others doing comparable work in the community, he could still be declared not disabled.)

Another exception might be a claimant who is working against doctor's advice or with extreme pain. That possibility should be explored with the claimant.

An alternative to finding a claimant involved in SGA, is to allow a Trial Work Period (TWP). This is allowed in cases where the disability remains the same, with little hope for improvement, but the claimant wants to go to work. To encourage such activity the TWP is allowed. The claimant has an opportunity to see if he can sustain work activity for up to a 9 month period. If he is able to do so, at the end of that time he is given the usual 3 months termination period. According to the regulations, TWP can begin as of the date of filing an application; in actuality, if a person makes over $200 it is certain he would not be granted a TWP. If a person makes $130 to $200, a case should be made for a TWP, if benefits are denied because of SGA. Once

a person is receiving benefits, and wants to try working, it would be well to have official sanction for a Trial Work Period, rather than report the return to work later, and risk being terminated for substantial gainful activity.

Advocate Tip

...Insist that an application be formally made, so as to protect appeal rights;

...investigate the possibility of subsidized employment;

...investigate the possibility that claimant is working against doctor's orders or under extreme pain;

...argue that a Trial Work Period should be allowed;

...initiate appeal procedure if claimant denied.

42 U.S.C.A. §1382c(a)(3)(A)&(C)
20 C.F.R. §416.901-931

Medical Test

The claimant must prove that he has:

> ...a medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months (or in the case of a child under the age of 18 if he suffers from a medically determinable physical or mental impairment of comparable severity).

The statute goes on to define physical or mental impairment as:

> ...an impairment which results from anatomical, physiological or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

The Social Security Administration has attempted to introduce a measure of objectivity into this test by publishing a Listing of Impairments. If a claimant has one of those impairments to the degree described in the listing, he is not only considered to have met the medical test, but also the work capacity test.

Claimants who have an impairment or impairments the equivalent in severity and duration to a listed impairment also are automatically eligible. This includes children under the age of 18 who meet the durational requirement and are determined, with appropriate consideration of the particular effect of disease processes in childhood, to have the medical equivalent of a listed impairment.

The rest of the claimants fall into the category that is less precise. Although their impairments might not be as severe as those listed or the equivalent, still it is enough, when considering other factors, to prevent them from engaging in substantial gainful activity. It is those persons that must also pass the work capacity test discussed in the next section.

Regardless of the degree of impairment, all claimants must have a medical impairment, which is medically determinable, severe, and expected to end in death or last at least 12 months.

The minimum requirement in terms of medical evidence is:

> ...a report signed by a duly licensed physician; or
>
> ...a copy of, or abstract from, the medical records of ....of a hospital,....or other public or private agency; or
>
> ...other medical reports, such as laboratory findings, etc.
>
> [20 C.F.R. §416.924]

The medical evidence needed includes signs, symptoms, and laboratory findings, described as follows:

> ..."Symptoms" are the claimant's own description of his physical or mental impairment;
>
> ..."Signs" are anatomical, physiological or psychological abnormalities which are demonstrable by medically acceptable clinical and diagnostic techniques;
>
> ...laboratory findings are manifestations of anatomical physiological, or psychological phenomena which are demonstrable by the use of medically acceptable laboratory diagnostic techniques.
>
> [20 C.F.R. §416.906]

The regulations expand on what is needed in the reports, as follows:

> ...shall also describe the individual's capacity to perform significant functions, such as the capacity to sit, stand, or move about, travel, handle objects, hear or speak, and
>
> ...in cases of mental impairment, the ability to reason or to make occupational, personal, or social adjustments...
>
> [20 C.F.R. §416.924]

It is important to remember that a claimant might not have one impairment which is disabling, but have several, which together, are considered disabling. Thus it is extremely important to thoroughly explore the claimant's medical history, and make sure that specialists in each area of impairment make a report.

One impairment that is often overlooked by claimants, physicians and advocates, is impairment due to psychological problems. Claimants sometimes have long-standing psychiatric problems which in fact have created job problems, but have never been treated. In addition, it is not uncommon for a person to react with emotional problems to the combined stress of a physical disability, loss of work, and no income.

Another aspect which is often overlooked, but has been considered favorably by the courts, is the subjective feeling of pain. Thus it is important to explore the extent, frequency, and depth of the pain experienced by the claimant, when at rest and when engaged in activities.

Obviously the physicians' reports must be very thorough. Both physicians and advocates should be familiar with the official Listing of Impairments, and whenever possible, the claimant's impairment(s) should be fitted into that Listing or be declared its equivalent. And of course, the reports should encompass all of the information outlined in the regulations.

Since the claimant is not seen by the State Agency team, every effort should be made to personalize the claimant in the reports. In addition, the State Agency does use impressions gathered by the District Office in their initial interview with the claimant. It is important that the claimant and the advocate both have contact with the Claims Representative in order to reinforce the seriousness of claimant's impairments.

It is estimated that about one-third of the reversals made at the first appeals level (reconsideration) occur because of additional and much more adequate medical reports. Updating of medicals is extremely important, since the claimant's physical/mental impairment might have deteriorated.

Advocate Tip

...Get a full medical history from the applicant; look carefully for evidence of impairments other than the ones first mentioned by the applicant.

...Secure all medical documents (from hospitals, physicians, and private agencies) that are in existence.

...Study the applicant's medical history as well as the supportive documents. Use Dorland's Illustrated Medical Dictionary or the Merck Manual of Diagnosis and Therapy so as to have a better grasp of the applicant's medical problems.

...Arrange for additional medical examinations
...if claimant has not had one very recently;
...if medical situation has changed;
...if he has not had a specialist examine him.

...Make sure all the medical reports include:
...clinical and diagnostic findings, not only medical conclusions;

...information as to the existence of the impairment, its probably duration, the severity of the impairment in functional terms;

...the prognosis of the impairment; for example, is deterioration occurring;

...the type of medication the applicant is taking, the effects it might have on his functioning, as well as the effects and possible dangers of other proposed forms of treatment.

...Secure statement from neighbors, friends, and family as well as the applicant himself about his everyday functioning.

...Try to have some impact on what is written by the District Office personnel and forwarded to the State Agency

42 U.S.C.A. §1382c(a)(3)(B)
20 C.F.R. §416.902(b)-(e)
§416.932-7

Work Capacity Test

Claimant must not be able to do:

...any previous work he may have done, or

...work commensurate with any such previous work, in the amount of earnings and utilization of capacities; and

...cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy.

Three groups of claimants are presumed to have met the work capacity test because they have met the medical test:

...those who have a listed impairment;

...those who have the equivalent of a listed impairment;

...children under the age of 18.

Other claimants are denied benefits at the end of the medical test, without recourse to the work capacity test, because their impairment is slight. The remaining, probably about half of the claimants, do have impairments which are substantial, but not sufficient to fall into the "automatically eligible" group. Instead their impairment must be related to their work capacity. It is this group that is most likely to need an advocate's help, and it is also this group of claimants that appears at the administrative hearing level of the appeals process.

It might be useful to look at the two aspects to the work capacity or employability test and the proof required for each. Those aspects are:

...unable to do previous work or similar work; and

...unable to do any other work.

Unable to do previous work.

This is the easiest and most objective part of the test. In order to prove that claimant is unable to do his previous work, it is important to understand thoroughly what job skills were necessary to perform that work and to relate the functional impairments to those job skills. Usually if one can prove that the claimant cannot do his previous work, it is fairly easy to prove that he cannot do an equivalent job, since the skills required would be similar.

Unable to do any work.

It is obviously difficult to prove that a person cannot do any kind of work. Proof is even more difficult because of language in the statute as follows:

> ...regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work.

Thus it becomes a hypothetical situation, rather than a real one for the claimant.

The most useful phrase in the statute, as far as claimants are concerned, is the one considering his age, education and work experience. As a matter of fact, SSA has spelled out in the regulations the kind of person that would most nearly fit that phrase, as follows:

> ..."where an individual with a marginal education and long work experience (example, 30 to 40 years) limited to the performance of arduous unskilled physical labor, is not working and is no longer able to perform such labor because of a significant impairment or impairments and considering his age, education, and vocational background is unable to engage in lighter work, such individual may be found to be under a disability."
>
> [20 C.F.R. §416.902(c)]

It is estimated that probably 15-20 per cent of the claimants could be made eligible under that regulation. Obviously it is one that advocates should study most carefully, to see if clients might fit that description.

If the claimant does not fit that description, then other avenues must be explored. One of the most fruitful is the psychological reaction of the claimant, both to his impairment and to his capacity for work. It is the intangibles of motivation and hope that make the difference between a person who is able to be employed again and one who is not. The advocate should attempt to get psychological testing and/or evaluation of the claimant as part of the process.

Another possibility is to get an evaluation at Vocational Rehabilitation services for the claimant. Although technically Vocational Rehabilitation services are available for each disabled applicant, it is well known that that agency only accepts for services those with the highest motivation and those who present the lowest element of risk. Thus chances would be good that the claimant would be rejected for those training and rehabilitation services.

It should be noted that legally the Social Security Administration has the burden of proof in terms of proving that a claimant can work at another job. However, that proof is usually met by listing three jobs taken from the Dictionary of Occupational Titles (DOT) which the claimant supposedly can do. The burden then rests on the claimant to prove he cannot do those jobs. Thus it is important for an advocate to be familiar with the DOT, so that when a job is listed he can check the job content and be in a better position to prove claimant cannot do the job.

Another tack for an advocate when confronted with a job listing is to take advantage of the regulation that states:

> ...isolated jobs of a type that exist only in very limited numbers or in relatively few geographic locations shall not be considered to be work which exists in the national economy.
>
> [20 C.F.R. §416.902(b)]

Note that an argument which is not viable is that the applicant has tried to get a job and there aren't any available--this is not an unemployment program.

If SSA does come up with a job that claimant might be able to do, an advocate should argue that nothing in the work experience or training of the claimant would show that he is capable of performing those tasks and that he should at least be allowed a period for training or a Trial Work Period.

Advocate Tip

...Secure a full work history from claimant including:
...the different types of jobs held;
...how long claimant has worked at each type of job;
...whether the jobs were skilled, unskilled or semi-skilled;
...the amount of physical and/or mental exertion involved in actually performing each type of work;

...Know claimant's education and training;

...Relate impairments to skills required in jobs;

...Be familiar with the DOT (Dictionary of Occupational Titles) used by SSA.

CHAPTER 8 – THE IMPACT OF MARITAL STATUS

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42 U.S.C.A. §1382c(b), (C),(d),(f)
20 C.F.R. §416.1001-59

CHAPTER 8

THE IMPACT OF MARTIAL STATUS

Overview

The determination of marital status is made very early in the application process. As a matter of fact, the determination is made before the claimant is given an application form, since there is a different form for individuals, couples, etc. Once that determination is made, whenever the word "spouse" (or couple) is used, it means someone who is considered married by SSA standards.

The Disadvantage of Being Married

To be considered married for purposes of SSI is definitely a disadvantage. To cite two examples of how adults are affected:

> ...Two eligible individuals living together can receive $292 per month; whereas an eligible couple receives $219;
>
> ...Two eligible individuals can have total countable resources up to $3000; whereas an eligible couple can only have $2250.

In addition, any person designated as a child loses that designation, because the definition of a child is an individual who is:

> ...neither married nor the head of a household; and
>
> ...under the age of 18 or under the age of 22 and a student.

With the loss of child status, special exclusions are lost:

> ...exclusion of earned income within prescribed limits:
>
> ...exclusion of one-third of any payment received from an absent parent.

Who is Considered Married

The following people are considered married:

...A couple ceremonially married;

...A couple legally married in states which recognize non-ceremonial common law marriages;

...A couple determined to be married for purposes of Social Security OASDI benefits;

...A couple found "holding themselves out" to the community as husband and wife.

It is obviously the last category that is the sticky one. The regulations require that the applicant shall be asked if:

> ...he is living in the same household with any unrelated person of the opposite sex and whether the applicant and such other person are holding themselves out in the community in which they reside as husband and wife.
>
> [20 C.F.R. §416.1020]

If the answer is "yes", that statement is taken at face value, since, as the Handbook (§5500) points out, it is clearly to the applicant's monetary disadvantage to answer "yes"; therefore he must be telling the truth. However, <u>if the applicant should say "no"</u>, the DO is directed to try to establish a couple relationship through asking a series of questions as follows:

...By what names are the parties known;

...How do the parties introduce each other to others;

...How is mail addressed to the parties;

...Do any deeds, installment contracts, tax returns, or other papers show them as husband and wife;

...If the home or apartment in which they reside is rented or owned by one of them, and what names are shown on the deed or the lease

[20 C.F.R. §416.1035(b)(i)]

The Handbook (§5520(C)) lists other possibilities for proving a marital relationship, some of which are:

...Listings in a city directory as husband and wife;
...Joint business dealings;
...insurance policies identifying one as the spouse of the other;
...Church records;
...Employment records;
...Birth certificates for children;
...Bank accounts;
...Wills.

Concerning how such answers will be weighed, the regulations virtually mandate arbitrary treatment of applicants:

...Unless the information supplied in response to the foregoing items satisfactorily establishes that the parties are not holding themselves out to the community in which they reside as husband and wife, they shall be considered husband and wife.

[20 C.F.R. §416.1035(b)(2)]

How to Terminate Marriage

For SSA to consider a marriage at an end, there must be a death, a divorce, an annulment, or a separation of at least six months.

It is the separation of at least six months that creates the most problem for claimants. Until the six months period is up, claimants are treated as if they are still living together, although they are not getting the benefits of shared expenses. The situation is further complicated by a series of rules that have been established covering possible multiple spouse situations, as follows:

...The person from whom the applicant most recently separated is considered the spouse in any one month, unless claimant states intent to resume living with another person, in which case that person would be considered the spouse;

...If a claimant separates from a spouse, and before the six-month period is over, lives in a holding out situation with another person, spouse No. 1 is not considered married and gets treated as an eligible individual. The claimant and spouse No. 2 are then treated as a couple.

Advocate Tip

...If a client comes to you before making an initial contact with the District Office, and he may be in a "holding out" situation, he should be carefully advised about the consequences of his answers to "holding out" questions. In addition, since the test is flexible and subjective, it may be possible to advise the client to change the way he and his companion conduct their affairs, so as to avoid a finding that they are "holding out."

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22 U.S.C.A. §1382(a)(1)(A), §1382(a)(2)(A), §1382(h), §1382a
20 C.F.R. §416.1101-80
C.M. §12300-12429

CHAPTER 9

THE INCOME TEST

Overview

A "grandfathered" blind claimant can use the more liberal income limit in the State Plan of October, 1972, provided he:

...received aid in December 1973 in that State;

...has continuously resided in that State;

...has been eligible continuously, or been ineligible for periods of not more than six months.

A new claimant or a "grandfathered" aged or disabled claimant must use the income test in the SSI program.

The over-all limitation on countable income is:

...$458 per quarter for an individual;

...$657 per quarter for an eligible couple.

Income is crucial in determining eligibility. It is also the key to determining how much the claimant will get when he is finally eligible. This Chapter will focus on how income is treated under the SSI program. Chapter 12 will show how a benefit payment is determined, using the information provided in this Chapter.

Income is defined as things of value which an individual or couple receive during a calendar quarter. Since resources are also things of value, they must be distinguished from income:

...an asset on hand at the beginning of a calendar quarter is a resource;

...an asset received during a calendar quarter is income.

As part of the "means test," all income must be scrutinized, however, not all income is counted. The formula is:

Countable Income: All Income - Income Exclusions

Income of an eligible individual includes, not only his own income, but also:

...If an adult, all income of his eligible spouse or part of the income of his ineligible spouse (deemed income);

...If a child, part of the income of his parent (and the spouse of his parent) (deemed income).

[20 C.F.R. §416.1101(a)]

The term "income" does not include:

...supplementary medical insurance premiums which is paid by a third-party insurer on behalf of a claimant;

...medical services which are paid for by a third party;

...social services furnished an individual by a governmental or private agency;

...income tax refund, if such taxes were previously included as income;

...cash received from the sale of a resource as defined in the Act (it remains a resource).

[20 C.F.R. §416.1105-15]

The rest of the Chapter will be focussed on examining in detail certain topics:

...Earned Income

...Unearned Income

...Major Income Exclusions

...Deemed Income

20 C.F.R. §416.1102(b)
C.M. §12315-21331

Earned Income

It is important, whenever possible, that income be considered earned as contrasted with unearned, because of the greater income exclusions for earned income. This is part of the philosophy of rewarding people for working.

Earned income includes wages, net earnings from self-employment, and in certain cases, income from rentals.

Wages

[C.M. §12316]

Wages include all remuneration from employment, not just the amount of money that the claimant receives. Thus it includes deductions such as income tax, the employee's share of F.I.C.A., health insurance, etc. It does not include:

> ...cash tips of less than $20 per month, payments made from retirement, sickness and similar funds--these are unearned income when received;
>
> ...contributions by an employer into a health insurance or retirement fund for his employees and his share of any F.I.C.A. or unemployment compensation tax payments--these are not wages and are not SSI income because they are not available to the claimant.
>
> [C.M. §12303]

Wages are considered income in the quarter they are received,

Exception: if payment is deferred at the request of the employee,

and the deferment would result in either: 1) eligibility, or 2) an increase in benefit payment of more than $10, the wages are allocated according to when they should have been paid.

Documentation required is usually paycheck stubs or a written statement from the employer. Evidence is not necessary if the claimant is an OASDI claimant, and the information given for both programs is consistent.

Authorization for contacting an outside source of information is required from the claimant. If the claimant refuses, the claim is denied. Once eligibility begins, SSA computer records of earnings and benefits (OASDI and Railroad Retirement Board) and Internal Revenue Service records are periodically compared to SSI program records. [C.M. §12307(b)]

Net Earnings from Self-Employment

[C.M. §§12319-12331]

The rules governing net earnings are similar to those in OASDI, except for the gross income limitation of SSI. Usually the net return is the basis for eligibility, but if the gross income is above a prescribed limit, claimant could be ineligible on that basis. Those prescribed limits are being established for classes of business. Until these limits are set, SSA will make decisions on a case-by-case basis [C.M. §12325].

The usual documentation needed to establish a projected income is the income tax return filed for the previous year, and current records kept in the regular course of business. If claimant thinks the projected income will be substantially less than the records indicate, good cause for such a belief must be shown.

Once earnings are projected for the year, an average is taken, and a quarterly projection of earnings is made. If there is gross variation from the estimate, claimant must report such change to the D.O.

Earnings from Rent

Income from rentals is usually considered unearned income. However, it is considered earned income if one of the following situations occur:

...a self-employed real estate dealer receives rent from property he is holding for sale;

...a self-employed farmer materially participates in the production-management of commodities on his land and receives rent from tenants;

...a self-employed householder rents rooms or apartments in his home and provides hotel-type services to his tenants.

Note that in each of these situations, the person is performing a service as well as receiving rent.

Unearned Income

Unearned income is all income (cash or in-kind) that is not considered earned.

Ordinary and necessary expenses incurred in getting the income can be subtracted from it. For example, if a claimant gets a settlement from an auto accident, the necessary legal, medical, and other expenses are deducted, and the balance is considered unearned income.

The different kinds of unearned income will be discussed below. Although deemed income is also unearned income, because of its complexity it will be discussed in a separate section beginning on page 78.

Periodic Payments

[C.M. §§12341-47]

The most common unearned income would be social security benefits, that is, OASDI. Note that premiums deducted for the optional Supplemental Medical Insurance under Medicare would be counted as unearned income. Other periodic payment benefits would be annuities, veterans compensation and pension, workmen's compensation payments, railroad retirement benefits, unemployment compensation, private pension and disability plans.

Proceeds of a Life Insurance Policy

[C.M. §12348]

All of the proceeds over $1500 are counted as unearned income. The amount under $1500 will only be counted after deducting costs of the insured's last illness and burial expenses.

Gifts

[C.M. §12349]

A gift can be in cash or in kind. If in kind, its fair market value must be determined. If it is given on a regular, frequent basis, it would probably be considered income. If given for special occasions, birthdays, and anniversaries, it could fall under the income exclusion provision for infrequent or irregular income (See page 72).

Support and Alimony Payments

[C.M. §12349.1]

Support means regular and/or substantial contributions in cash or kind which provide for some or all of the individual's usual needs. Alimony is the allowance made by a court to a spouse in connection with a divorce action. The legal agreement in itself is not enough; there must be proof that actual payment is received.

Inheritance

[C.M. §12349.2]

Inheritance means cash, other liquid assets, or any right in personal or real property of the deceased to which one succeeds in ownership as a result of the death of another. The inheritance is not counted as income until it becomes available for support.

Support and Maintenance Furnished in Cash or in Kind

[C.M. §12349.3]

Support and maintenance are determined differently, depending on the living situation of claimant. If claimant is declared to be "living in the household of another", the benefit payment level is reduced 1/3, instead of considering such contributions to be unearned income. (See page 128) However, if only some support and some maintenance, or either support or maintenance are provided, then the fair market value is determined, and that sum is considered unearned income.

If it is difficult to determine fair market value, SSA provides a chart for determining that value, for example: per month, shelter only is $20 for an individual, $30 for a couple; food (3 meals) is $30 for an individual, $60 for a couple.

Prizes and Awards

[C.M. §12349.4]

All prizes and awards are generally unearned income.

If it is not in cash, the fair market value must be considered.

Note: it could be considered an infrequent or irregular payment and excluded from income (see page 72).

Rents

[C.M. §12349.5]

Rental income that is not earned income (see page 63) is unearned income. Personal expenses (out-of-pocket) can be deducted from the unearned rental income.

Dividends and Interest

[C.M. §12349.6]

Dividends and interest are unearned income at the time they become available to an individual, whether or not they are actually received.

Royalties

[C.M. §12349.7]

Royalties are payments to the holder of a patent or copyright. They are unearned income, unless part of a royalty-related trade or business.

Work-Related Unearned Income

[C.M. §12349.8]

These payments represent reimbursement for services

rendered which are not considered earnings. For example, payments in kind to a domestic employee, tips under $20 a month; agricultural wages in kind; jury fees.

Income Exclusions

The two major income exclusions are:

The first $60 per quarter of any income, except income based on need.

The first $195 per quarter plus 1/2 the remainder of earned income.

The chart below lists all the exclusions, which are applied in the order listed, to the advantage of the claimant:

...Refund of Property or Food Taxes

...Assistance Based on Need

...Tuition and Fee Amounts of Grants, Scholarship and Fellowships

...Home Produce for Personal Consumption

...Infrequent or Irregularly Received Income
...$60 per calendar quarter of unearned
...$30 per calendar quarter of earned

...Amounts received for providing foster care

...1/3 Child Support payments from an Absent Parent

...Student Child Earnings

...$60 per calendar quarter of any income (except income based on need)

...$195 per calendar quarter plus 1/2 the remainder of earned income

...Blind only, Work Expenses

...Amount Per Plan for Self Support of Blind or Disabled

...Other: Foster Grandparent or RSVP Programs.

The rest of this section is devoted to a brief summary of each exclusion.

Refund of Property or Food Taxes

[C.M. §12361]

Refunds from any public agency as a return or refund of taxes paid on real property or on food purchased is excluded from income. Proof would be an official statement; if none available, DO must contact the State or local taxing authority for verification.

Assistance Based on Need

[C.M. §12362]

Assistance based on need must be distinguished from income based on need.

Assistance based on need is regular payments to individuals by a State or local government (including Indian Tribes) in supplementation of SSI payments. The entire payment is excluded from counting as income. Proof would be an official statement, if the payment is not administered by SSA; if not available, a telephone contact to the State or local agency is sufficient.

Income based on need is regular payments to individuals in need by the Federal government, such as Veterans Pension Pay-

ments, Cuban Refugee payments, BIA general assistance, or by private agencies, such as the Salvation Army, United Jewish Appeal, Catholic Charities. No part of these payments is excluded, but instead are subtracted dollar for dollar from the benefit payment level.

Tuition and Fee Amounts of
Grants, Scholarships and Fellowships

[C.M. §12363]

Only the tuition and fee portions of grants, scholarships and fellowships are excluded. Any portion which is used for general living purposes is not excluded. Any portion which includes payment for services to any past, present or future employer is not excluded, for example, members of the Armed Forces, work-study students. The educational institution itself will be asked to state the amount of the tuition and fee.

Home Produce for Personal Consumption

[C.M. §12366]

The term home produce has reference to farm and garden produce, e.g. vegetables, fruit, dairy products, etc. If it's used for home consumption, or traded for home consumption, it is excluded. Even if some produce is sold for cash, it is not counted if the major portion of which is grown is personally consumed.

However, if the claimant is engaged in a commercial farming operation, then earned income from self-employment must be considered.

Infrequent or Irregular Income

[C.M. §12367]

Infrequent or irregular income is excluded from consideration if the total does not exceed $30 earned or $60 unearned per quarter. Note: this total is the same for a couple as for an individual. Income is termed infrequent if it is received less often than twice a quarter.

Income is termed irregular if it is unpredictable so it cannot be counted upon or budgeted for.

Claimants can work sporadically and can occasionally receive a gift without losing SSI payment or having payment reduced.

Payments for Providing Foster Care

[C.M. §12369]

Payments to an eligible individual for a child placed in his home by a public or private non-profit child placement agency are excluded from consideration as income.

If the child is a claimant, payments to his foster parents for his support and care are unearned income to the child. They are not income to the foster parent.

One-Third of Child Support Payments

[C.M. §12371]

An eligible child who receives support payments (or in-kind contribution) from an absent parent is allowed to exclude from consideration as income one-third of the payment. Note that the $60 any income exclusion can be applied to the remainder. The other two-thirds is considered unearned income.

Irregular payments in the nature of an occasional gift or donation not exceeding $60 in any quarter may be totally excluded under the provision relating to infrequent or irregular income, since this is more favorable.

Student Child Earnings

[C.M. §12372]

To qualify for the student child earnings exclusion, the individual must be:

> ...a child under age 22, neither married nor the head of a household;
>
> ...a student regularly attending school designed to prepare him for gainful employment.

The amount of the exclusion is $1,200 in a calendar quarter with an overall limit of $1,620 per calendar year.

$60 Per Quarter of Any Income

This exclusion, $60 a calendar quarter or $20 a month, applies to any type income (earned or unearned), except income based on need. (See page 70 for a discussion of income based on need.) Note: the $60 total is the same for a couple as for an individual.

The $60 per quarter exclusion is applied as follows:

...If there is earned income only, apply the entire amount to that income;

...If there is unearned income only, apply the entire amount to that income;

...If there is both earned and unearned income, apply first toward the unearned income; any amount remaining is then applied to the earned income.

Earned Income Exclusion

[C.M. §12374]

The income exclusion of $195 a quarter ($65 a month) plus one-half of the remaining income, is applied only to an eligible individual's earned income. The dollar amount of the exclusion is not increased when both an eligible individual and his eligible spouse have earned income. The amount for the period of the quarter applies whether one or more than one member has earned income.

Work Expenses of the Blind

[C.M. §12375]

Ordinary and necessary expenses reasonably attributable to the earning of income are excluded from consideration as income. If an individual has a spouse eligible on the basis of blindness, both are eligible for this income exclusion.

Prior approval of work expenses is needed. The actual amount excluded is the amount that is finally expended for the work expense. Records of expenses must be kept.

Note: A "grandfathered" blind recipient may still remain eligible for work expense exclusions permitted under the old State Plan.

Amount for Self Support of Blind or Disabled

[C.M. §12378]

Income, whether earned or unearned, of a blind or disabled recipient, may be excluded if such income is needed to fulfill a plan designed to achieve self-support. Conditions for application of this exclusion are:

...the individual's plan must be approved;

...the plan must contain specific savings, goals and/or planned disbursements of funds for the designated objective, and the period for achieving it;

...the plan must provide for the identification and segregation of the money and goods being accumulated and conserved, if any;

...the plan must be current;

...the individual must be performing in accordance with the plan;

...there can be no changes in the plan without prior approval.

The maximum time period for a plan is usually 18 months; under certain conditions it can be extended another 18 months.

Note: A "grandfathered" blind or disabled recipient who is conserving income and resources under an old State Plan can continue under that Plan, subject to the time limitations in that plan, and not to exceed the time limits noted above.

If a plan is abandoned, or fails for any reason and is not replaced by another plan, the conserved funds become countable resources available for the individual's support, if carried over from a previous quarter. A current determination of countable income and resources must then be made.

Other Income Exclusion

Income from the Retired Senior Volunteer Program and Foster Grandparent Program, or similar programs funded under the "Older Americans Comprehensive Services Amendments of 1973" are excluded from consideration as income.

Note: if a disabled person works in one of the programs, his income would not be counted; however, his performance could still be evaluated in terms of whether he was still disabled.

42 U.S.C.A. §1382c(f)(1)(2)
20 C.F.R. §416.1185
C.M. §§12400-12429

Deemed Income

Deeming of income is attributing income to an eligible individual, even if that income is not actually available to that individual. It occurs when:

...an eligible adult is residing in the same household with his ineligible spouse; or

...an eligible child under age 21 is residing in the same household with his parent(s) or the spouse of his parent.

Deemed income is unearned income, and is subject to only two income exclusions:

...the $60 per quarter any income exclusion;

...the Self-Support Plan for the blind and the disabled.

Deeming does not occur in two situations:

...from ineligible children to eligible children, or

...from ineligible children to eligible parents.

The theory behind the deeming concept is that persons related by blood, marriage, or adoption, who live together as a family unit, bear a responsibility to each other to share income and resources. However, because SSA defines "married" those persons who are not legally married, that theory is questionable. (See Chapter 8) SSA is thus in a position of demanding support money from persons who have no legal obligation to

support. For example, an eligible child lives with his mother, who is receiving welfare benefits for herself and her other children. A man who is not the father of the children lives in the household. SSA determines that the man and the woman are in a "holding out" situation and therefore married for purposes of SSI. If his income is not considered when computing the AFDC grant, it can be considered available for the purpose of "deeming" to the eligible child. [C.M. §12413]

Since not all income of the ineligible individual is "deemed" available to the eligible individual, a complicated process must be gone through in determining how much income is deemed. The process differs depending on whether the income is deemed to a spouse, to a child, or to both a spouse and children. Before going through that process in the three situations, it is important to understand what income of the ineligible individual is excluded from consideration.

Income Exclusions

[C.M. §12402(b)]

Certain income is not counted for deeming purposes:

...occasional benefits or personal services;

...income received as a representative payee;

...medical or social services;

...court ordered payments for persons not in the household;

...the earned income of a child up to $1200 per quarter; $1620 annually (unless used to meet the family's needs;

...income used in determining welfare payments or the payments themselves;

...any portion of a grant, scholarship, fellowship used to pay the cost of tuition and fees;

...amounts received for foster care of a child who is not eligible.

...bonus value of food stamps;

...refunds of real property or food taxes;

...income actually set aside for an approved plan for self-support.

Deeming to a Spouse

[C.M. §12404]

The process for deeming income to a spouse is as follows:

...determine the income of the ineligible spouse;

...eliminate the income exclusions;

...from the earned income, subtract $195 per quarter to cover work expenses;

...subtract the following amounts that the ineligible spouse is allowed to keep:
  ...$219 per quarter for the ineligible spouse;
  ...$195 per quarter for each ineligible child, less his countable income.

The amount that remains is considered unearned income to the eligible individual.

Deeming to a Child

[C.M. §12408]

A child, for purposes of deeming, must be under age 18, or between the ages of 18 and 21, not married, and not head of a household. That child must be living in the same household with a parent (or spouse of such parent).

The deeming process to a child is as follows:

...determine the income for the calendar quarter of the ineligible parent(s);

...do not count the income exclusions listed above;

...from the earned income, subtract $195 per quarter to cover the expenses of earning the income; only one deduction is allowed, even if both parents are working;

...subtract the amounts that the ineligible members of the household are allowed to keep for their own needs:

...$438 per quarter for one parent;
...$657 per quarter for two parents;
...$195 per quarter for each ineligible child (reduced by the amount of income of each child).

The amount that remains is considered unearned income to the child.

Deeming to a Parent and Child

[C.M. §12415]

When the household is composed of an eligible parent, and one or more eligible children, the ineligible parent's income is deemed to all eligible individuals in the household, as follows:

...determine the income of the ineligible spouse/parent;

...eliminate the income exclusions;

...from the earned income, subtract $195 per quarter to cover work expenses;

...subtract the following allocations:

...$219 per quarter for the ineligible spouse/parent;
...$195 per quarter for each ineligible child.

The amount remaining is considered unearned income and divided among the eligible parent/spouse and the eligible children. Each person is allowed the income exclusions noted previously.

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42 U.S.C.A. §1382(a)(B); §1382(a)(1)(B); §1382(a)(2)(B); §1382(q); §1382b; §1382
20 C.F.R. §416.1201-1266

CHAPTER 10

THE RESOURCE TEST
[C.M. §12500-12676]

Overview

A "grandfathered" claimant can use the more liberal resource limit in the State Plan of Oct. 1972 provided he:

...received aid in December 1973 in that State;

...has continuously resided in that State;

...has been eligible continuously, or been ineligible for periods of not more than six months.

A new claimant must use the resource test in the SSI Program. The over-all limitation on countable resources is as follows:

...$1500 for an individual;

...$2250 for a couple.

Resources are things of value, such as cash, a home, and a car. Since there is obvious overlap with the term income, the difference is that a resource is what a claimant has at the beginning of a calendar quarter, whereas income is what is received during a calendar quarter.

Resources include not only the resources of the claimant, but also resources deemed to him, as follows:

...if an adult, all the resources of his spouse;

...if a child, part of the resources of his parents.

Although all resources must be scrutinized, in order to satisfy the means test, not all resources are counted. Claimants are allowed to have certain basic necessities, such as a home, a car, household goods and personal effects, etc., all within limits. The basic formula for the resource test is:

Countable Resources: All Resources - Resource Exclusions

Even if a claimant should have countable resources that are over the allowable limit, he still can be made eligible. An advocate can be very helpful in disposing of his resources in the most advantageous way possible. It is also possible for a claimant to begin to receive conditional payments, if he agrees to dispose of those excess resources.

In order for an advocate to be of most help to a claimant, it is important the he should clearly understand certain issues. Those are discussed in detail in the following sections;

...Liquid vs. Non-Liquid Resources;

...The Major Resource Exclusions;

...Deemed Resources;

...What to do About Excess Resources.

Advocate Tip

...Be familiar with the old State Plan regarding resource limitations;

...Check to see if a claimant would do better under the old Plan than under the SSI limitation.

Liquid vs. Non-Liquid Resources

A liquid resource is cash, or a financial instrument that can be converted into cash within 20 working days. All other resources, such as real and personal property, are considered non-liquid.

It is important to know the difference because a claimant can have many more non-liquid resources. There is only one exclusion allowed against liquid resources, whereas there are several exclusions permitted of non-liquid resources. (The major resource exclusions will be discussed in detail in the next section.) The amount of liquid resources which a claimant can have is also critical in deciding how to get rid of excess resources, and in becoming eligible for conditional payments. (This will be discussed in the last section of this Chapter.)

Some examples of a liquid resource are:

...Cash and checking accounts;

...Savings accounts;

...Promissory notes;

...Mortgages;

...Stocks;

...Mutual fund shares;

...Municipal, Corporate and Government Bonds;

...U.S. Savings Bonds;

...Pre-paid burial contracts that can be converted into cash;

...Trusts, if the claimant/spouse/parent is the creator of the trust.

[C.M. §§12515-12522]

The critical issue is whether the resource can be converted into cash within 20 days. For example, a pre-paid burial contract that is irrevocable would not be considered a resource at all. Certain U.S. Savings Bonds must be held for a certain period of time; if that period of time were more than the 20 working days, that bond would be a non-liquid resource.

Some examples of a <u>non-liquid resource</u> are:

...non-business real property;

...business real property;

...personal property which is not readily converted to cash;

...financial instruments which cannot be converted to cash within 20 working days.

Documentation is required of all resources. Thus the application process will be expedited if the claimant produces as much proof as possible as quickly as possible. The word of the claimant will not suffice.

Major Resource Exclusions

The major resource exclusions and their limits are listed in the chart below.

RESOURCE	LIMIT
...Home	Up to $25,000 ($35,000 in Alaska & Hawaii)
...Household Goods and personal effects	Up to $1,500
...Automobile:	Totally Excluded
...auto used for medi-treatment	
...auto used for employment	Totally Excluded
...auto especially equipped for the disabled	Totally Excluded
...auto for general use	Up to $1,200
...Insurance:	
...burial insurance	Totally Excluded
...term life insurance	Totally Excluded
...other life insurance	Up to $1,500 total face value
...Resources essential to self-support	Determined by DO
...Resources necessary to fulfill an approved plan for self-support	Determined by DO
...Land held by Indian Tribe	Totally Excluded
...Stock held by natives of Alaska	Totally Excluded

If the claimant should go over the limit in one or more resources, the amount that he is over can be applied against the overall countable resource limit of $1500 for an individual and $2250 for a couple.

> EXAMPLE: Al has household goods and personal effects worth $2000 and has $1000 in a savings account. (He has no other countable assets.) He is $500 over the household goods and personal effects category, but this, when added to his savings account, amounts only to $1500, which he is allowed to have in <u>total countable resources</u>.

If the claimant should go over the overall limit of $1500 for an individual, $2250 for a couple, it still might be possible to be eligible for conditional payments, pending disposal of the excess resources. (See page 107)

In the rest of this section, each of the major resources exclusions is discussed in greater detail.

The Home

[C.M. §12565-78]

Definition: Any shelter in which the individual or spouse with whom the individual lives has a home ownership interest and which is used as the principal place of residence. The home may be either real or personal property, fixed or mobile, and located on land or water. It includes the buildings and land, houses, cooperative and condominium apartments, mobile homes, motor homes, and houseboats are examples of qualifying homes.

Value: The value of such a home can be excluded from consideration as a resource up to $25,000 ($35,000 in Alaska and Hawaii). The limitation is the same for a couple as for an individual. If the home is worth more than the limits stated, the excess would count toward the overall resource limit of $1500 for an individual and $2250 for a couple.

Note that if there are other owners in addition to the individual or couple, the excess would be divided among all owners.

Other Property: Real property, including farmland, associated with a home, is excluded from being counted as a resource to the extent it is below the limitation. The only requirement is that the real property must adjoin the plot on which the home is located.

Business and Non-business Property: If a home property is also a place of business or a farm, any property related to that activity is part of the home property for purposes of the home exclusion. If there is other non-business activity conducted on the home property (e.g. a vegetable garden), any non-liquid resource related to that activity is part of the home property for purposes of the home exclusion. Add the market value of personal business property (equipment, machinery, etc.) to the current market value of the home real property and compare with the limit mentioned above.

Documentation: Documentation required is the tax assessed value as stated in a tax bill, in the case of real property, or a current registration document or a title, in the case of personal property, such as a mobile home.

If there is some reason for the DO to think the property is underassessed, further investigation is in order, and possibly a higher market value could be assigned to the property.

Home Replacement Exclusion: A home can be replaced if sold or damaged with another excludable home without counting the proceeds of either the sale or insurance as includable resources during that replacement period. The proceeds of a sale are excluded for up to 3 months; the proceeds of an insurance reim-

bursement on home loss may be excluded from resources for up to 6 months on real property (3 months on personal property).

The proceeds are defined as the net payments received by the seller after satisfaction of all actual encumbrances and sales expenses.

A home replacement period cannot be extended, however, note that the replacement can be considered as occurring when payment is made or contracted in writing to be made for a substitute home or for home repairs.

When the replacement period ends, proceeds in excess of payment made or contracted to be made must be counted as resources as of the quarter following the quarter in which the proceeds were originally received. And, of course, interest received on excluded proceeds counts as unearned income.

Advocate Tip

...If an applicant owns a home well in excess of the market value limit, he may have an actual equity in the home which is far less because of mortgages or other liens. If such a person wants to become eligible for the SSI program, he may wish to sell his current home, and use the net proceeds to purchase a home which is within the market value limit.

Household Goods and Personal Effects

[C.M. §12580-90]

Definition of Household Goods: Household goods are all personal property customarily found in the home and used in connection with the maintenance, use, and occupancy of the premises. This encompasses items necessary for an adequate standard of sustenance, accommodation, comfort, information and entertainment of occupants and guests. This includes, but not limited to: furniture, furnishings, linens, household appliances, carpets, dishes, cooking, and eating utensils, television sets, tools, etc.

Definition of Personal Effects: Personal effects are non-liquid personal property which is worn or carried by an individual or has an intimate relation to him, such as clothing, jewelry, personal grooming articles, recreational equipment, musical equipment, hobby items, etc.

Value: The value of the household goods and personal effects which can be excluded from consideration as a resource is $1500. This is the same for an individual as for a couple.

If the value is over that figure, the excess can be counted against the overall resource limitation of $1500 for an individual, $2250 for a couple.

Documentation: Documentation is generally not required, unless the claimant has items of unusual value, such as expensive china, silver or glassware, art works, expensive carpets, antiques, heirlooms, jewelry, furs, etc. If the items of unusual value are worth more than $500, then each item must be evaluated, together with any large appliances or major furniture pieces. In each instance the current market value is the amount to use, rather than the replacement value.

Advocate Tip

...One wedding ring and one engagement ring are totally excluded from consideration as a resource. So are items required because of an individual's physical condition, e.g., wheelchairs, hospital beds, etc.

Automobile

[C.M. §12590]

Definition: An automobile is any vehicle owned by the eligible individual or person whose resources are deemed to the eligible individual which can be used to provide necessary transportation. Examples, in addition to an automobile, are trucks, boats, special types of vehicles such as snowmobiles or animal drawn vehicles.

Value: The value of a vehicle can be totally excluded if used for medical treatment, for employment, or if specially equipped for a handicapped person. If the vehicle does not fit one of those categories, it is excluded up to a value of $1200. If the vehicle is valued at more than $1200, the excess can be counted against the overall limitation of $1500 for an individual; $2250 for a couple.

Number of vehicles: Only one vehicle is allowed for an individual and/or a couple. An additional vehicle may be excluded as necessary for self-support or as necessary to fulfill a plan for achieving self-support. If the individual(s) own more than one vehicle, this exclusion applies to the vehicle of greater value.

Documentation: Documentation depends on the use of the vehicle:

...for medical treatment, car must be used at least four times a year for a specific or regular medical problem;

...for employment, car is presumed to be used if there is income from work activity in the household;

...for specially equipped vehicles, any modification of the vehicle for a handicapped person is sufficient;

...to establish market value, the Red Book is generally used.

Advocate Tip

...Since all SSI applicants are either aged or blind or disabled, it should be relatively easy to prove that the car is needed for medical treatment and is therefore excluded regardless of value. All one has to prove is that the car is used on the average at least four times a year to obtain medical treatment.

Life Insurance

[C.M. §§12620-34]

The amount of life insurance which an elderly person carries can be a problem, since that generation of persons had a strong belief in the need to be heavily insured. Thus it is important to understand how SSA evaluates life insurance policies.

Definitions: Certain definitions are important in understanding how to evaluate policies:

...Insured: the individual upon whose life a policy is effective;

...Beneficiary: the individual who receives the money upon the death of the insured person;

...Owner: the individual paying the premium on the policy;

...Insuree: Company which contracts with the owner of the policy;

...Face Value: the basic death benefit or maturity amount of the policy stated on the face of the policy. This may be decreased by loans. It does not include dividends, and special provisions;

...Cash Surrender Value: The amount which the insurer will pay upon cancellation of the policy before death or maturity. This value usually increases with the age of the policy, and decreases when premiums aren't paid or loans are taken on the policy.

Value: The following life insurance policies are totally excluded from consideration as a resource:

> ...all term insurance policies (there is no cash surrender value);
>
> ...burial insurance policies;
>
> ...all other policies which do not have a combined face value of more than $1500.

Note that the claimant and his spouse are each allowed to have $1500 combined face value but one family member cannot hold a $3,000 policy on the assumption that the family is allowed $3,000. The limit is applied on an individual basis, and thus it is important to determine the name of the insured. For example, the father of a disabled child owns $1,000 ordinary life insurance policies on himself, his wife, and his disabled child. Since the face value of the policy for each person does not exceed $1,500, all the policies are excluded.

If claimant has life insurance policies on himself which have a combined face value of more than $1,500, then the cash surrender value of the policies must be determined. However, since only the owner of the policy has the right to the cash surrender value, it is important to determine who that owner is. Thus a claimant could be insured, but the owner of the policy might be someone else, and hence the cash surrender value would not be attributed to him.

Once the cash surrender value of the policies is determined, that amount is considered a countable resource. However, the claimant does have the option to adjust his life insurance policies so as to be excluded from consideration as a resource.

Documentation: The DO will want to see the insurance policies and also will be in touch with the insurance company, in the event that further development of the issue is necessary. For example, the only way that cash surrender value can be determined, is through direct contact with the insurance company. An advocate can be helpful by getting that information early and making sure that the DO is not operating on just the face value of the policies. Premium payments might be in default and/or the claimant might have taken a loan on the policy.

Excess policies: There are a number of options open for claimants who have excess policies. If his other resources, together with the cash surrender value of the policies, is under the $1500 limit for an individual, $2250 for a couple, no further effort is necessary. However, if he is over the limit, it is possible for claimant to convert the policy to term insurance or burial insurance (which would then be totally excluded), convert to ordinary life insurance at a lower face value, or cash in the policy and spend the money.

Advocate Tip

...An advocate can be of special help to the claimant in getting an accurate assessment of the cash surrender value of the policies, and in exploring which option is most advantageous to the claimant, in the event that the insurance policies put the claimant over the resource limits.

Resources Necessary for Self-Support

[C.M. §§12600-15]

Definition: Resources necessary for self-support can be either property used in a trade or business or non-business income producing property.

Property used in a trade or business includes all the necessary capital and operating assets of the business. Exception: liquid assets (cash) cannot exceed what is needed to operate the business for three months.

Non-business income producing property includes land or other non-liquid property which provides rental or other income, but which is not otherwise used as part of a trade or business. Examples: a small apartment or room which is rented out; property used to raise food for home consumption; tools and equipment of an employee; a second motor vehicle when needed in the day to day work activities.

Resources are excluded only if all the following conditions are met:

> ...the resource is used in a trade or business or is otherwise producing income. Exception: a resource is not in use, but claimant plans to use the resource for self-support; a 1 year period is usually allowed, but that limit can be extended in unusual circumstances.
>
> ...the resource is producing a reasonable return. Exception: the return is not reasonable but improvement is anticipated, and claimant is given a year to show improvement. If an unusual circumstance has caused a temporary decline, claimant can have 18 months in which to show improvement.
>
> ...the gross value of the resource is within reasonable limits.

Documentation: In deciding whether the resource is a business or non-business income producing property, usually reliance is placed upon the manner in which the income from the property is being reported for income tax purposes. Business income is generally reported on Schedule C, Schedule F, Form 1065 and Schedule SE. Non-business income such as rents and royalties is generally reported on Schedule E of Form 1040. Other information needed includes current books kept on the business and/or trade, and statements on the assessed valuation of property.

The limitation on non-business property which is producing income at a reasonable rate of return is simply that its fair market value is reasonable. (The DO decides what is reasonable.) The

limitation on the value of business assets depends upon the type of business enterprise, which would fall into one of four categories. Again the DO would decide what that limit is. If the limit is passed on either business or non-business property, none of it is excluded.

Advocate Tip

...If a client has a resource necessary for self-support, read carefully the appropriate sections of the Claims Manual and the Handbook.

...If a client has a resource not currently in use, argue that that resource is necessary for his future self-support.

...Keep in mind that the income from such a resource is not excluded.

Resources Necessary for an Approved Plan for Self-Support

The regulations governing this resource exclusion would be similar to the ones governing the previous section, Resources Necessary for Self-Support.

The differences are:

...the plan must be approved ahead of time;

...this exclusion is only applicable for the blind and the disabled;

...liquid, as well as non-liquid resources can be used in the Plan, thus it is a more liberal exclusion.

The Claims Manual section dealing with this issue is not yet available.

Advocate Tip

...For a blind client, exploration of this possibility could be very advantageous;

...For a disabled person, the only caution is that taking advantage of this program might result in being ineligible because of "substantial gainful activity."

Land Held by Indian Tribe

[C.M. §12552(a)(2)]

Restricted or alloted land held by an enrolled member of an Indian tribe is excluded from resources if it cannot be sold or transferred without permission of other individuals, or the tribe, or a government agency.

Stock Held by Natives of Alaska

[C.M. §12500(d)]

The statute specifically excluded certain shares of stock held by natives of Alaska in a regional or village corporation from counting as resources for a period of 20 years during which time the stock is inalienable.

42 U.S.C.A. §1382c(f)(1)(2)
20 C.F.R. §416.1202

Deeming of Resources

[C.M. §§12652-67]

Deeming of resources is attributing resources to an eligible individual, even if those resources are not actually available to that individual. It occurs when:

> ...an eligible adult is residing in the same household with his spouse;
>
> ...an eligible adult lives separately from his spouse, but has not yet been separated for 6 months;
>
> ...an eligible child under age 21 is residing in the same household with his parent(s) or the spouse of his parent.

The theory behind the deeming concept is that persons related by blood, marriage, or adoption, who live together as a family unit, bear a responsibility to each other to share income and resources. However, because SSA defines as married those persons who are not legally married, that theory is questionable. (See Chapter 8) There is the additional notion that economies can be achieved by persons living together. However, there is an inconsistency in that couples who are separated less than six months are treated as if they were still living together and sharing those economies.

Deeming is handled differently for adults than for children.

Deeming to an Adult

All the resources of a spouse (as defined by SSA), who is living with him, are deemed available to him, regardless of whether the spouse is eligible or ineligible for benefits. The same situation applies for a couple who have not been separated for the full six months period. The major resource exclusions are the same for a couple as for an individual, with the exception of life insurance, or, in the case of two blind or two disabled persons, resources necessary for a plan for self-support. The overall limitation on countable resources for a couple is $2250.

Deeming to a Child

Deeming to a child from a parent(s) (or spouse of a parent) occurs when claimant is under 18, or under 21, unmarried, and a student. The child must be living with the parent(s). The deeming rules are:

...allow the parents all the resource exclusions allowed to persons applying for SSI;

...if the countable resources remaining are $1500 for one parent or $2250 for two parents, no resources are deemed to the child;

...if the countable resources are over the $1500 for one parent or $2250 for two parents, everything over that amount is deemed to the child, or, if there is more than one eligible child, divided up among the eligible children;

...the child's resources are then computed; he is not allowed another house or another car, but he is allowed personal effects and household goods up to the $1500 maximum;

...the child's resources are added to the deemed resources, and if the total is not over $1500, the child is eligible.

If the child becomes ineligible because the deemed resources put him over the limit of $1500, it still is possible to be declared eligible for conditional payments upon agreement to dispose of the excess resources, as is explained in the next section.

What to do About Excess Resources

[C.M. §§12506-8; 12530-47; 12651; 12670-6]

An advocate can be particularly useful to a claimant who has resources that are over the total allowable limit of $1500 for an individual, $2250 for a couple. There are four possibilities:

...changing countable resources into excluded resources;

...giving away or selling certain resources before applying for SSI;

...receiving conditional payments, based on an agreement to dispose of excess resources;

...for a grandfathered claimant, using the resource limitation in the old State Plan.

Changing Countable Resources into Excluded Resources

As is clear from the previous section on Major Resource Exclusions, certain resources are excluded from consideration in

computing the resources of a claimant. Thus if a claimant should have too much cash, which is not excluded, that cash could be converted into excluded resources, as follows:

...a wedding ring;

...a car within certain limits;

...a home;

...life insurance;

...burial insurance;

...household goods within certain limits.

It is very important that the advocate do a thorough evaluation of the claimant's situation, and understand the details of the resource exclusion. Then the options can be explained to the claimant, so that he can make the best decision, considering his situation.

Giving Away or Selling Excess Resources

[C.M. §12507]

An individual can dispose of excess resources before applying for SSI. This is true with respect to cash and real or personal property, and also true even if the resource is given as a gift or sold for less than its market value to a relative or friend. In addition, an individual may also reduce his resources by prepaying debts (such as rent, taxes, installment charges, etc.) so long as the prepayments are irrevocable.

The basic rule is that the transfer must be legally binding, and that the resource cannot be transferred back to the individual.

If this action is taken more than 12 months before applying, no further inquiry is made, unless there is reason to believe that the transfer of the resource was not legally binding. If the action was taken within 12 months prior to applying, the DO will want documentation to make sure that the resource disposal is legally binding and irrevocable.

Note that an individual can apply for SSI, be told he has too many resources, withdraw or drop his application, dispose of those resources as outlined above, and then apply again for SSI and be accepted.

Conditional Payments

[C.M. §§12530-47]

The statute provides for payments to be made to a claimant who has total countable resources over the allowable limits. Those payments are made conditional upon the disposal of the excess resources, and can be recovered from the proceeds of the sale.

The basic idea behind this provision is that real and personal property cannot be quickly converted into cash, and thus people could go hungry before they could sell their property and

use the proceeds for their survival needs.

However, not every claimant can avail himself of conditional payments. Certain requirements must be met, as follows:

...the total countable resources cannot exceed $3000 for an individual or $4500 for a couple;

...the liquid (cash) part of the resources cannot exceed $438 for an individual and $657 for a couple;

...the claimant must agree in writing to reducing the resources;

...real property must be disposed of within six months from the signing of the agreement; all other property within three months. Exception: the time limit for disabled and blind persons does not begin until the date the person is determined blind or disabled.

...resources must be disposed of at or near the current fair market value, and cannot be given away.

If the claimant has made an honest effort to sell but has been unable to do so for good cause, he is given a three months extension. If at the end of that time, it still isn't possible to sell, the assumption is that there is no market for the item. The claimant is allowed to continue receiving payments and the resource must be put on the market again at the time of redetermination of eligibility.

If the resource is sold, the net proceeds (fair price minus all expenses) are applied as follows:

...as much money as possible is credited to what is left of the overall resource allowance of $1500 for an individual and $2250 for a couple;

...as much of the balance as is necessary to recover the conditional payments made to the individual/couple;

...any remaining proceeds are considered liquid resources and the claimant is ineligible until the resources have been spent down to the allowable resource allowance level.

If the claimant at any time breaks the agreement, the conditional payments stop immediately, and the claimant must repay the money already given to him.

Note that resources might increase sometime after a claimant becomes eligible for benefits. If claimant does not want to have his payments interrupted, it would be possible to enter into an agreement to dispose of those resources and receive conditional payments.

Advocate Tip

...be thoroughly familiar with rules governing disposal of resources;

...study major resource exclusions;

...get full information from claimant regarding his situation;

...be prepared to explain options to claimant in order that his decision can be a fully informed one.

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CHAPTER 11

OTHER MAJOR ELIGIBILITY CONDITIONS

Overview

This Chapter will focus on a discussion of the other major eligibility conditions in addition to those covered in the previous Chapters, which must be met if claimant is to receive benefits.

Claimant must:

...be a resident of the U.S.;

...be a U.S. citizen or alien lawfully residing in the U.S.;

...not be institutionalized;

...file for all other benefits to which he may be entitled;

...accept vocational rehabilitation if disabled or blind;

...accept treatment if certified an alcoholic or drug addict.

42 U.S.C.A. §1382(f)
20 C.F.R. §416.202(b)

U. S. Residency

There is no interstate residency requirement as it was known in the welfare system. However, an applicant must have been in this country for at least 30 days prior to applying for benefits. And once an applicant is a recipient of benefits, if he leaves the country for 30 consecutive days, his benefit payments are suspended until he has been back in the country for 30 days.

42 U.S.C.A. §1382c(a)(1)(B)
20 C.F.R. §416.203-5

U.S. Citizenship or Alien Status

To be eligible, a claimant must prove that he either has U.S. Citizenship or is an alien with permanent residency, or has been admitted lawfully for permanent residence.

To prove citizenship or national status, the following evidence is necessary:

...public record or religious record of birth or baptism; or

...certificate of citizenship; or

...certificate of naturalization; or

...a U.S. passport; or

...an identification card for use of Resident Citizen in the U.S. (INS Form 1-179)

To prove lawful alien status, the proof must come from the Immigration and Naturalization Service. The proof for permanent residence is:

...INS Form I-94 (Arrival-Departure Record) endorsed "Refugee-Conditional Entry"; or

...INS Form I-94 endorsed to show bearer has been paroled for an indefinite period pursuant to §212(d)(5) of the Immigration and Nationality Act; or

...Documentation in the form of correspondence from INS stating the applicant has been granted indefinite voluntary departure or an indefinite stay of deportation.

The proof for lawful admittance for permanent residence is:

...Alien Registration Receipt Card (INS Form 1-151); or

...a reentry permit.

Advocate Tip

...Since there is such heavy reliance on the Immigration and Naturalization Service as a source of documentation, if your client is in this country illegally, it would be well to consult with attorneys expert in immigration law. In some communities there are social agencies that give help to immigrants, such as International Institutes. Such an agency could also be consulted.

42 U.S.C.A. §1382(e)(1)
20 C.F.R. §416.231
C.M. §§12210-20

Living in an Institution

When claimant enters an institution, and stays there for a full calendar month, it is possible that he is no longer eligible for SSI benefit payments, or his benefit standard might be reduced.

Certain definitions are useful in understanding how this issue is treated.

...Institution: an establishment which furnishes (in single or multiple facilities) food and shelter to four or more persons unrelated to the proprietor, and, in addition, provides some treatment or services which meet some need beyond the basic provision of food and shelter.

...Public institution: an institution that is the responsibility of a governmental unit, or over which a governmental unit exercises administrative control.

...Inmate of a public institution: a person who is living in a public institution and receiving treatment and/or services which are appropriate to the person's requirements. A person is not considered an inmate when he is in a public educational or vocational training institution, for purposes of securing education or vocational training.

...Being in an institution "throughout a month" means a continuous stay involving 24 hours of every day, in a calendar month. Brief periods of absence while continuing in the status of an inmate of the institution and lasting not more than 14 consecutive days, would not interrupt a continuous stay in the institution.

> ...An institution "receiving payments," with respect to an individual under a State plan approved under Title XIX...means that Title XIX funds are being provided the hospital, skilled nursing facility, or intermediate care facility (either public, private, or voluntary non-profit) for reimbursement for the substantial part of the cost of services rendered the individual. For purposes of this section, a "substantial part of the cost" means more than 50 percent of the cost of services provided by the institution to the individual during his stay therein.
>
> [20 C.F.R. §416.231(b)]

The basic idea is that if all of an individual's needs are being met, then an SSI payment is not necessary. In other circumstances, if most of the needs are being met, then the payment should be reduced. The major situations are:

> ...The benefit standard is reduced to $25 * for personal needs only, if the individual is in a public or private institution, such as a hospital, nursing home, or intermediate care facility, and if that institution is receiving substantial Medicaid funds (over 50%) for that individual;
>
> ...The benefit standard * stays the same if the individual is in a private institution, such as a hospital, nursing home, or ICF, which is <u>not</u> receiving substantial Medicaid funds;
>
> ...Benefit payments are suspended if the institution is public, and it is not receiving Medicaid funds, such as a jail, prison, or other correctional facility.

For further discussion of this issue, the Claims Manual should be consulted, §§12210-12220.

* The benefit <u>payment</u>, of course, would depend on the amount of countable income of the individual.

Advocate Tip

...Make sure that the client's benefit payments are not changed unless he is in an institution for every single day of a full calendar month. Also be aware that benefit payments can be suspended for up to 12 months without going through the process of termination.

42 U.S.C.A. §1382(e)(2)
20 C.F.R. §416.240
C.M. §12240-8

Must File for Other Benefits

Claimant must file for other benefits to which he might be entitled within 30 days after he has been asked to by the Social Security Administration in writing. (An additional 5 days is added for mail service).

Claimant must not only file for those benefits, but must vigorously cooperate and produce whatever evidence is necessary.

Failure to either file or vigorously pursue benefits result in automatic suspension of benefits, if already receiving benefits, or of denial of application. (Exception: if claimant can prove he does not have the capacity to file or pursue the claim.) If claimant has already been receiving benefits, he must pay those benefits back.

Advocate Tip

...If a claimant has not filed for benefits and it is past the 30 day time limit, argue that he did not understand what he was supposed to do. Note that this does not excuse him from filing--he still will have to comply with the request.

42 U.S.C.A. §1382d
20 C.F.R. §§416.1703,1705,1707
C.M. §6600-14

Vocational Rehabilitation Requirements

Blind and disabled applicants, at the time of application, must agree to cooperate with the Vocational Rehabilitation and accept their services. The statute provides that:

> ...". . . the Secretary shall make provision for referral of such individuals to the appropriate state agency administering the State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act and (except in such cases as he may determine) for a review not less often than quarterly of such individual's blindness or disability and his need for and utilization of the rehabilitation services made available to him under such plan.

It further provides that:

> ..."no individual shall be an eligible individual or eligible spouse. . . if he refuses without good cause to accept vocational rehabilitation services for which he is referred. . ."

An applicant or recipient can refuse to accept vocational services only for "good cause." The regulations do not provide specific standards but do give two examples:

> ...membership or adherence to a church or religious sect which teaches exclusive reliance on spiritual methods of treating and caring for physical or mental impairments when the recipient's refusal to accept services was the result solely of his belief in these teachings;

...regular attendance by the recipient or applicant at a school, college, university or course of vocational or technical training designed to prepare him for gainful employment.

The burden of proving "good cause" is on the claimant.

Not every claimant is even contacted by Vocational Rehabilitation, since many claimants would not be considered "suitable" for their programs. However, <u>every claimant has the right to request those services</u>. The range of services include:

...Evaluation of rehabilitation potential;

...Counseling and guidance;

...Medical, surgical and related services to correct or reduce the disability;

...Prosthetic devices;

...Services in comprehensive or specialized rehabilitation facilities, including sheltered workshops or valuation centers;

...Maintenance and transportation during rehabilitation;

...Reader services for the blind, interpreter for the deaf;

...Occupational tools, equipment, etc.;

...Other goods and services necessary for rehabilitation;

...Special assistance in the establishment and management of a small business;

...Placement in suitable employment, follow-up with with the employer;

...Referral to other agencies for services not provided by Vocational Rehabilitation.

42 U.S.C.A. §1382(e)(3)(A)
20 C.F.R. §416.981-5 & 1710-11

Treatment for Drug Addiction or Alcoholism

Claimants who are determined to be disabled at least partly because of their alcoholism or drug addiction, are certified by SSA as being alcoholics or drug addicts. In order to receive benefits, claimants so certified must accept treatment.

There are certain requirements for the treatment:

...the treatment must be appropriate to the individual's specific need;

...it must be a "recognized medical or other professional procedure;

...the treatment must be carried out under the supervision of an approved treatment facility;

...the treatment must be free;

...the facility must be accessible by public or private transportation at a reasonable cost;

...the "condition and circumstance" of the individual must be taken into account, as well as general health, mobility and capacity to understand the treatment plan.

If a claimant does not want treatment, the above requirements should be carefully scrutinized to see if they are applicable. In addition, religious grounds might be invoked, if appropriate, as allowed under the Vocational Rehabilitation requirements.

Although it was initially anticipated that this would be a big problem, it has not turned out to be, at least in California. As of November 1973, no new claimant had been certified as alcoholic or a drug addict. This is in line with the policy under Disability Insurance of not recognizing either alcoholism or drug addiction as a disability. Thus claimant would have to be severely disabled on other grounds, or have severe medical disabilities created by the alcoholism or drug addiction. New claimants, at least in California, who would have been eligible under the old State plan, now undoubtedly become recipients of the local general assistance programs.

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CHAPTER 12

BENEFIT PAYMENTS

Overview

Once a person is declared eligible for benefits, two questions arise:

...to whom is the money paid?

...how much money is paid?

Concerning the first question, the majority of the claimants get their money in a check made out to them. However, some claimants, either because it is mandated by law or because SSA thinks it is in their best interest, will have their money paid to a representative payee. How that system works is discussed in the Section immediately following this introduction.

Concerning the second question, that depends on a number of factors which have already been discussed in this Handbook, such as amount of income, marital status, institutionalization, living arrangements. Two other factors which have an influence in certain situations will also be discussed:

...a claimant who lives in another person's household;

...certain grandfathered claimants who have an essential person living in their household.

And finally, in order to illustrate how benefit payments are computed, twelve examples have been developed, utilizing concepts discussed previously in the Handbook.

This Chapter will therefore examine the following issues:

...representative payee;

...living in another person's household;

...essential person status;

...how to compute benefit payments.

42 U.S.C.A. §1383(a)(2)
20 C.F.R. §416.601-90
C.M. §A3050-57.2

Representative Payee

SSA has the right to appoint someone as a representative payee, who then receives all benefit payments in the name of the claimant. SSA must appoint a representative payee if claimant has been medically determined to be a drug addict or alcoholic. In all other cases SSA has broad discretionary powers to decide whether claimant needs a representative payee. There is no requirement for a legal test of competency.

SSA usually tries to take into consideration the wishes of the claimant in appointing the representative payee. However, in the case of the drug addict or alcoholic, preference is given to the agency that is providing treatment. In the case of other claimants, relatives and friends are given preference, although a public or private agency can also be so designated.

A representative payee must use the funds on behalf of the claimant's basic needs. He cannot use the funds for himself. SSA requires written reports on a periodic basis, as well as reporting of events affecting eligibility.

SSA reserves the right to change the representative payee, and, of course, except in the case of drug addicts or alcoholics, can decide that claimant no longer needs one.

Advocate Tip

...Be alert to cases in which claimant does not want a payee. He has the right to request a hearing on this issue, if he is not alcoholic or an addict. Any claimant has the right to request that someone else be appointed a payee, if the current payee is not performing adequately. However, there is no right to appeal that issue.

Essential Person Status

Several of the States included an additional sum of money in the benefit payment to an eligible individual who had an essential person living in his household. An individual could be considered as an essential person if his remaining in the home was necessary for the well-being of the claimant. An essential person, depending on the particular State, might be a husband, wife, or other relatives, or an unrelated individual.

Under SSI, an eligible individual grandfathered into the program can continue to receive additional money in the benefit payment for an essential person, if he so chooses, provided that the eligible individual:

> ...received aid for the month of December 1973 under the old State Plan in effect for June 1973, and that such Plan included provision for an "essential person";
>
> ...continues to reside with the essential person, with absences from the home of not more than six months, or until the absence is permanent, whichever is earlier.

The essential person must also meet certain criteria, as follows:

> ...his needs were taken into account in determining the needs of the eligible individual as cited above;
>
> ...he lives in the home of the eligible individual, and is not absent for more than 90 days;

...he is not eligible in his own right for SSI payments;

...he is not the eligible spouse of the eligible individual or any other individual;

...he does not have income or resources in an amount that causes the eligible individual to lose eligibility for SSI payments.

Essential person status can be lost permanently by not meeting the above criteria. However, if an eligible individual loses his benefits because his own resources and income are above the limits, essential person status is not permanently lost.

At any time, the eligible individual can request in writing that the essential person status be eliminated. Such a request is irrevocable and results in permanent loss of essential person status.

Note that the amount to be included for an essential person is $73. However, all income and all resources of the essential person are deemed to the eligible individual. No exclusions are allowed.

Advocate Tip

...explore whether essential person status is possible;

...figure out if it is to the eligible individual's advantage to continue that status, in view of stringent deeming provisions.

42 U.S.C.A. §1382(a)(2)(A)
20 C.F.R. §416.1125

Living in Another Person's Household

If the claimant is determined to be living in another person's household, then his benefit payment standard of $146 is automatically reduced by one-third. Living in another person's household means that:

> ...it is a private household, not a commercial establishment, an institution, or a care situation;
>
> ...support and maintenance are both received (includes room and board together with other incidentals).

Congress anticipated that there might be a number of situations, such as an elderly parent living with an adult child, in which room and board would be given. In order to prevent case-by-case determination of actual cost, the flat reduction rate was put in the statute.

The determination of this issue is made very early in the application process. Question #13 on the application form states: "check the item below which most nearly describes where you live". One of the choices is "in another person's household". If claimant makes that choice, he is next asked if he is receiving support maintenance. If the response is "yes", then the one-third reduction applies. If the response is "no", then there is further development by the DO. Claimant must provide proof to support his position, and that proof must be corroborated independently by other members of his household.

The major problem is that in some instances claimant might be making a payment for room and board. Unless he can prove that the payment is at least equal to what it would cost him to rent an apartment and buy and prepare his own food or to rent a room and eat most meals out, the one-third reduction still applies. [C.M. §12236(d)]

Keep in mind that if only room, or only board is supplied, that contribution is cashed out and counted as unearned income (see page 66).

There are ways to get out of the designation of living in another person's household. Claimant must prove one of the following:

> ...that he is the head of the household: proof could consist of legal documents showing he is the legal owner of the home, or has joint ownership interest, or that he is legally liable for the payment of the rent; or
>
> ...that he is equally sharing living costs: proof could consist of receipts or bills issued jointly; evidence that he is sharing responsibility equally for running the household, that the money is pooled, etc.

Note: The issue of equality is a tricky one. The Claims Manual [§12238(d)] stresses that there must be a "general equality in economic situations", thus precluding claimant from living with a more affluent friend and still being considered as sharing living costs, unless claimant can prove otherwise.

There appears to be variation from office to office concerning how this issue is handled. Some offices are interpreting it quite liberally, others quite strictly. SSA in Baltimore is concerned about

this variation, and has been circulating drafts of rules which would reinforce the strict application of the one-third reduction.

Advocate Tip

...explore claimant's situation;

...if 1/3 reduction already applied, file an appeal;

...use the head of household or sharing living costs regulations, whichever fits claimant's situation best.

How to Compute Benefit Payments

Benefit payments are computed by first looking at claimant's marital status and living arrangements. The chart below outlines the possibilities. It begins with the basic benefit standard for eligible individual and an eligible couple. Although most claimants will fit one of those two categories, others will have different living arrangements on either a temporary or permanent basis.

		Monthly	Quarterly
1.	Eligible Individual	$146	$438
2.	Eligible Couple	219	657
3.	Eligible Individual in institution	25	75
4.	Eligible Couple in institution	50	150
5.	Eligible Individual in own home; Eligible Spouse in institution	171	513
6.	Eligible Individual in "household of another"	97.34	292
7.	Eligible Couple in "household of another"	146	438
8.	Eligible Individual in own home; Eligible Spouse in "hous-hold of another"	219	657
9.	Eligible Individual with "essential person"*	219	657
10.	Eligible Couple with "essential person"*	292	876

* Possible only for certain grandfathered claimants.

Once the benefit standard is determined, then countable income must be subtracted from that standard, to arrive at the benefit payment. Note that all calculations are done in quarters, and that the final step is the conversion of the quarterly payment into a monthly payment.

The year is divided into four calendar quarters:

...1st calendar quarter is January, February, March;
...2nd calendar quarter is April, May, June;
...3rd calendar quarter is July, August, September;
...4th calendar quarter is October, November, December.

The only time when quarters are not used in computing benefits is if claimant applies in the second or third month of a quarter. When that happens, income is considered as of the month of application.

The following examples have been developed to show the variation in payment, depending on the differing circumstances of the claimants. The calculations begin with the basic benefit standard, and show how that sum changes depending on the living situation, marital status, and income of the claimant. Concepts discussed in the previous chapters are utilized, and thus the examples can be used as a review. It might be useful to cover over the answers and simply do your own computations.

Note: Information on State Supplementary Payments (SSP) are not covered in this Handbook. Consult your local District Office or Welfare Department for such information.

EXAMPLE #1

Eligible Individual, Living Alone, No Income

Jane Olson is disabled, lives alone, and has no outside income. Her SSI benefit standard is $438 per quarter; her benefit payment is also $438 per quarter. Her monthly benefit payment is $146 ($438 divided by 3). Her total monthly income is $146.

EXAMPLE #2

Disabled Adult, Living Alone, Working

Jane Olson gets a part-time job as a telephone solicitor. During the first calendar quarter she earns $660 ($230 per month) and reports her earnings to SSA. Her benefit payments are calculated as follows:

1. Countable Income:

gross income	$660.00
any income exclusion	-60.00
	$600.00
Earned income exclusion	-195.00
($195 + 1/2 the remainder)	$405.00
	-202.50
Countable Income	$202.50

2. Quarterly Benefit Payment:

quarterly benefit standard	$438.00
countable income	-202.50
Quarterly Benefit Payment	$235.50

3. Monthly SSI payment: $235.50 divided by 3 = $78.50

Jane's total income for the month is

$ 78.50	SSI payment
+ 230.00	earned income
$ 308.50	Total Income

Note: Because Jane is disabled and earning over $200 a month, she is considered by SSA as engaging in substantial gainful activity and subject to termination of benefits on that basis. However, Jane persuaded them that she needs to test out whether she can work on a sustained basis, and since her medical condition has not changed, SSA has allowed her a nine month Trial Work Period.

EXAMPLE #3

Blind Adult, Living Alone, Working

Jane's friend, Mary Johnson, is blind, and lives alone. She works as a counselor for blind students in a special government program and makes $1200 a calendar quarter ($400 a month). She has several expenses in connection with her work which amount to $200 a quarter. Her benefit payments are calculated as follows:

1. Countable Income:

gross income ———————	$1200
any income exclusion ———	-60
	1140
earned income exclusion ———	-195
($195 + 1/2 the remainder)	945
	- 472.50
	$ 472.50
work expense exclusion ———	-200
Countable Income ———————	$ 272.50

2. Quarterly Benefit Payment:

quarterly benefit standard ———	$ 438.00
countable income ———————	-272.50
Quarterly Benefit Payment ———	$ 165.50

3. Monthly Benefit Payment: $165.50 divided by 3 = $55.17

Mary's total income for the month is

$ 55.17	SSI payment
400.00	earned income
$455.17	Total Income

Unlike Jane, Mary is in no danger of being terminated, in spite of earning considerably more than her friend. The reason is because there is no work test for the blind, hence no reason to look at earnings except in so far as it affects the amount of the benefit payment.

EXAMPLE #4

Eligible Child, Living with Parent

Judith Jerrolde is 9 years old, blind, and lives with her mother Sharon. Sharon earns $900 per quarter ($300 per month) as a file clerk. Judith's benefit payment is calculated as follows:

1. Deemed Income:

gross income	$900
work expense exclusion	-195
net income	$705
Sharon's needs	-438
Deemed Income	$267

2. Judith's Countable Income:

deemed income	$267
any income exclusion	-60
Judith's Countable Income	$207

3. Quarterly Benefit Payment:

quarterly benefit standard	$438
countable income	-207
Quarterly Benefit Payment	$231

4. Monthly Benefit Payment: $231 divided by 3 = $77

The family's total monthly income is:

$ 77	Judith's SSI payment
+300	Sharon's income
$377	Total Income

EXAMPLE #5

Eligible Individual, Living Alone, Working

Shirley Gulag lives alone, is 66 years old, and works as a Foster Grandparent. Her earnings are $300 per quarter ($100 per month). Since any earnings from the Foster Grandparent program are excluded from consideration as income, Shirley gets her full benefit payment of $146 per month.

Shirley's total income for the month is:

$146	SSI payment
100	Foster Grandparent Income
$246	Total Income

Note: If Shirley had been disabled, her Foster Grandparent income would still have been excluded. However, SSA would look at her performance, and if that performance indicated an ability to work, she could be declared ineligible on that basis.

EXAMPLE #6

Eligible Individual with Ineligible Spouse
(Deeming)

Shirley decides to marry John Archipelego, who is 64 years old. John works as a general handyman and makes about $900 a quarter ($300 a month). Shirley continues as a Foster Grandparent. Her benefit payment is calculated as follows:

1. Deemed Income:

gross income	$900
work expense exclusion	-195
net income	$705
John's needs	-219
Deemed Income	$486

2. Shirley's Countable Income:

deemed income	$486
any income exclusion	-60
Shirley's Countable Income	$426

3. Quarterly Benefit Payment:

quarterly benefit standard	$438
countable income	-426
Quarterly Benefit Payment	$ 12

4. Monthly Benefit Payment: $12 divided by 3 = $4

The family's total monthly income is:

$ 4	Shirley's SSI payment
100	Shirley's Foster Grandparent income
300	John's earned income
$404	Total Income

Compare this example with that of Judith Jerrolde. One parent is allowed to keep twice as much for needs as is a spouse.

EXAMPLE #7

Eligible Individual, Living Alone

Bill Jones is 70 years old, lives alone, and gets a pension of $180 per quarter ($60 per month). His benefit payment calculation is as follows:

1. Countable Income:

pension	$180
any income exclusion	- 60
Countable Income	$120

2. Quarterly Benefit Payment:

quarterly benefit standard	$438
countable income	-120
Quarterly Benefit Payment	$318

3. Monthly SSI payment: $318 divided by 3 = $106

Bill's total income for the month is: $106 SSI payment
+ 60 pension
$166 Total Income

EXAMPLE #8

Eligible Individual, Living in the Household of Another

Because of the problems of inflation, Bill is having difficulty living on his very meager income. He goes to live with a friend Al Smith, who is still working, owns his own home, and is generally fairly well off. Al agrees to a nominal payment for room and board. When Bill reports his new living situation to SSA, he is told that the 1/3 reduction applies because he is not the head of the household (Al owns the house), and he and Al can't be considered as sharing expenses because of their unequal economic status. Thus Bill's new benefit payment is:

1. Countable Income: $120 (See calculation in Example #7)

2. Quarterly Benefit Payment:

quarterly benefit standard	$438
one-third reduction	-146
	$292
countable income	-120
Quarterly Benefit Payment	$172

3. Monthly SSI Payment: $172 divided by 3 = $57.33

Bill's total income for the month is:
$ 57.33 SSI payment
+ 60.00 pension
$117.33 Total Income

EXAMPLE #9

Two Eligible Individuals in a Holding Out Situation

Bill decides that the drastic cut in his SSI payment makes it uneconomical to live with Al. He recalls what the SSA said about Al being of unequal financial ability, and determines not to make that mistake again. He has another friend, Sally Flowers, who is an SSI recipient herself and has no outside income. She is receiving a benefit payment of $146 per month ($438 per quarter). They decide it would be economical to live together, and begin to do so. Bill faithfully reports his change in living circumstance to SSA. SSA calls in both Bill and Sally, and after a series of embarrassing questions, decides that Bill and Sally are in a "holding out" situation, and are an eligible couple instead of being two eligible individuals. Their monthly benefit payment is:

1. Countable Income: ---------- $120 (See calculation in Example #7)

2. Quarterly Benefit Payment:

quarterly benefit standard -------- $657
countable income ---------- -120
Quarterly Benefit Payment --------- $537

3. Monthly SSI payment: $537 divided by 3 = $179

Bill and Sally's total income for the month is:
$179 SSI payment
+ 60 pension
$239 Total Income

Note: If Bill and Sally had been considered two eligible individuals, their total monthly income would have been:
$146 Sally's SSI payment
106 Bill's SSI payment
+ 60 pension
$312 Total Income

EXAMPLE #10

Eligible Individual at Home;
Eligible Spouse in Institution

Sally becomes ill with ulcers because of the "holding out" situation and the subsequent reduction in income. She is hospitalized for more than a calendar month in a hospital which receives 70% of its funds from Medicaid. During that period of time, the benefit payments were calculated as follows:

1. Sally receives $25 a month, the amount allowed an eligible individual in an institution to take care of her personal needs.

2. Bill receives the amount for an eligible individual of $146, less the countable income of $40, for a total of $106. (See Example #7).

Bill and Sally's total monthly income is:

$ 25	Sally's SSI payment
106	Bill's SSI payment
+ 60	Bill's pension
$191	Total Income

EXAMPLE #11

Eligible Couple Living Separately

When Sally comes home from the hospital she and Bill decide to separate. Bill finds another apartment for himself. Until they have been separated for six months, however, their benefit payments will be calculated at the couple rate of $219 per month:

1. The SSI payment is the same as in Example #9--$179.

2. Sally's monthly payment will be 1/2 of that or $89.50.

3. Bill's monthly payment will also be $89.50.

Bill's total income for the month will be:

$ 89.50	SSI payment
+ 60.00	pension
$149.50	Total Income

Sally's total income will be the SSI payment of $89.50.

EXAMPLE #12

Eligible Individuals Sharing Equally in Household

Both Sally and Bill have learned the hard way from their experiences. After the six months separation period, they both decide to organize a commune of other SSI recipients. The commune is set up so that every person shares equally in the household costs and in the management responsibility. Every member is especially careful to arrange his affairs so that the men and women in the group will not be in danger of being in a "holding out" situation. The benefit payment calculations for Bill and Sally are as individuals:

1. Bill gets the same SSI benefit payment for eligible individual as he did in Example #7: $106

2. Sally gets the full amount for an eligible individual with no income of $146.

Bill has the same total monthly income as in Example #7: $166; Sally 's income is only from SSI, and thus is $146.

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CHAPTER 13

POST-ELIGIBILITY EVENTS

Overview

Once claimant is declared eligible for SSI benefits, SSA and claimant have a mutual obligation to ensure that claimant continues to meet all the eligibility requirements and that the amount of the benefit payment is correct.

The claimant discharges his responsibility by reporting promptly any change in his circumstances which might possibly affect eligibility or the amount of his benefit payment. SSA discharges its responsibility by fully examining any change reported by claimant or a third party, and also by regularly scheduled redeterminations of all eligibility factors.

The result of changes in claimant's circumstances can, of course, lead to suspension, or termination of benefits, and to overpayment or underpayment of benefits.

This Chapter will be focussed on examining each of these issues:

...reporting requirements;

...redeterminations of eligibility;

...suspension or termination of benefits;

...overpayments and underpayments.

42 U.S.C.A. §1383(e)(2)
20 C.F.R. §416.701-15
C.M. §5300-5

Reporting Requirements

Claimant or his representative payee is required to report all changes in his circumstances which affect eligibility or the amount of the benefit payment. This requirement is clearly spelled out on the application form, which is signed by the claimant.

The following events or facts must be reported to the SSA:

...change in address;

...change in living arrangements;

...change in income;

...change in resources;

...eligibility for other benefits;

...death;

...change in marital status;

...cessation of blindness or disability;

...refusal to accept vocational rehabilitation services;

...departure from the U.S.;

...admission to or discharge from a public institution;

...admission to or discharge from a hospital, skilled nursing facility, or intermediate care facility;

...change in school attendance;

...loss of status as a resident of the U.S.;

...refusal to accept or discontinuance of treatment for drug addiction or alcoholism.

These events must be reported as soon as the event occurs or is anticipated to occur. Failure to report within the 30 day period after the quarter in which the event takes place, may result in a penalty deduction being imposed, and withheld from his benefits.

Penalties are imposed according to "penalty periods":

...the first one begins with the day an application for SSI benefits is filed and ends with the day on which SSA becomes aware that a reportable event has occurred. Exception: If no penalty is imposed, after SSA has all the facts in the case, the first penalty period is extended to the day SSA becomes aware that a reportable event has occurred which does result in a penalty being imposed;

...the second one begins at the close of the previous penalty period and ends with the date SSA becomes aware that a reportable event has occured; the same exception described above applies;

...the third one begins at the close of the second penalty period and ends when SSA becomes aware that a reportable event has occurred; the same exception described above applies.

The penalties are as follows:

...$25 for the first penalty period;

...$50 for the second penalty period;

...$100 for the third penalty period.

Note that it is possible to have several violations occur in any one penalty period; however, there is only one penalty imposed for that period.

Penalties can be waived for good cause, for example:

...claimant was unable to comply with the reporting requirements because of age, comprehension, memory, physical and mental condition;

...claimant did not understand the reporting requirements;

...claimant did not have full knowledge of the event to be reported.

Penalties will not be waived for the following reasons:

...failure to furnish information which claimant knew or should have known was material;

...an incorrect statement was made by claimant which he knew or should have known was incorrect;

...acceptance of a payment which the individual knew or could have been expected to know was incorrect.

Note: The Claims Manual takes the position that if reasonable evidence is presented to show that the delay or failure was not willfully intended, no penalty will be imposed. It compares the limited use of the penalty in Title II cases and stresses the greater deprivation of SSI claimants. As of November, 1974, no cases of penalties being assessed had been received.

Keep in mind that the statute clearly spells out that there are more serious consequences for fraud. If convicted in a court of law, a person could be fined not more than $1,000 or imprisoned for not more than one year or both. Fraudulent acts are defined in §1383a, as whoever:

(1) knowingly and willfully makes or causes to be made any false statement or representation of material fact in any application for benefit under this subchapter;

(2) at any time knowingly and willfully makes or causes to be made any false statement or representation of material fact for use in determining rights to any such benefit;

(3) having knowledge of the occurrence of any event affecting (A) his initial or continued right to any such benefit, or (B) the initial or continued right to any such benefit of any other individual in whose behalf he has applied for or is receiving such benefit, conceals or fails to diclose such event with an intent fraudulently to secure such benefit either in a greater amount or quantity that is due or when no such benefit is authorized; or

(4) having made application to receive any such benefit for the use and benefit of another and having received it, knowingly and willfully converts such benefit or any part thereof to a use other than for the use and benefit of such other person.

The key here is obviously the intent of the person's actions.

Redeterminations of Eligibility

SSA must be sure that claimant continues to be eligible for benefits, and that the amount of the benefit payment is accurate. Redeterminations of eligibility occur when:

...the SSA computer schedules it;

...the claimant reports certain changes in his circumstances;

...a third party reports certain events.

SSA Scheduled Redeterminations

The SSA computer notifies the DO that a claimant's eligibility must be redetermined at least 12 months after the month of initial application, unless the DO inputs an earlier redetermination date. After the first redetermination is made, the next redetermination will be scheduled for 12 months after that, unless there is reason to determine eligibility at an earlier date.

Although a face-to-face interview is considered most desirable, the appropriate form SSA-8200 can be mailed to the claimant for completion and signing, if the workload of the DO is too heavy to provide for a face-to-face interview. Note: there is a special concern that all converted or grandfathered claimants in particular get a face-to-face interview.

The computer system retains control over the process, and the redetermination data is supposed to be put into the system within 45 days from date of notice to conduct such redetermination. If the data is not forthcoming, an alert is generated and transmitted by wire to the DO. Within 30 days after the first alert, a second alert is sent, with copies to the regional offices. This occurs every 30 days until the information is transmitted.

If the claimant fails to respond to the first attempt to make contact with him within 10 days, a second attempt is made, with notification that failure to respond could result in suspension of future payments in 30 days. If after the alloted time claimant has not responded, benefit payments are suspended.

Claimant Initiated Redeterminations

Claimants or their representative payees are required to notify SSA of events which may affect their continued eligibility for payments. If the event does not affect their eligibility or benefit payment, no further redetermination is necessary. If the event reported results in suspension or termination of payments, no further redetermination is necessary, until the claimant asks for reinstatement. The events which may require the DO to perform a redetermination include:

...death of a claimant or a member of his family, such as spouse, parent, ineligible child, essential person;

...change of address, which might indicate change in living arrangements, sale of home, move outside of U.S., move of a converted claimant to another State;

...work activity and earned income;

...unearned income;

...resources;

...change in marital status;

...change of student status of a disabled/blind child;

...change in support from absent parents;

...reports of medical improvement;

...representative payee dies or says he no longer wants to serve.

If any of these events occur, there would be a redetermination of all eligibility factors, and the same process would apply as in the scheduled determination.

After completion of the redetermination, the computer would schedule the next regular redetermination 12 months later.

Third Party Initiates Redetermination

Notifications or reports from outside sources may raise questions concerning the continuing eligibility and/or payment amounts of claimants. The events noted above as being possibly reported by claimant, might also be reported by a third party. In addition, a third party might also report failures of claimants to:

...prosecute claims for other benefits;

...accept vocational rehabilitation services;

...accept treatment for drug addiction or alcoholism, or

...maintain residence in the U.S.

If the event reported results in immediate suspension or termination of benefits, redetermination of other eligibility factors is not required, until the claimant asks for reinstatement. If the event affects eligibility or payment amounts but immediate suspension or termination is not involved, then a full redetermination is required. If the event does not change basic eligibility or payment amounts, a redetermination is not done unless a scheduled redetermination is due within 90 days. Upon completion of the redetermination, the computer would schedule the next redetermination for 12 months hence.

In all instances, the DO has the right to schedule redeterminations earlier than the 12 months, but not later than the 12 months.

Suspensions and Terminations

Suspension of benefit payments is required when claimant no longer meets the requirements for eligibility and when termination does not apply. Claimant will continue to have the payment suspended until all eligibility requirements are met or until benefits are terminated.

Certain actions are not suspensions, but rather simply a denial of the claim:

...claimant has failed to apply for other benefits, and such fact is determined before he starts receiving payments;

...claimant did not comply with the agreement to dispose of excess resources, and on which basis he received conditional benefits;

...payment was made to an individual faced with a financial emergency who later was found not to be eligibile for benefits;

...payment was made to an individual presumed disabled and such disability is not established.

The following events would result in suspension of benefits:

...excess income;

...excess resources;

...claimant in public institution;

...claimant fails to accept treatment for drug addiction or alcoholism;

...claimant absent from the U.S.;

...claimant refuses vocational rehabilitation services;

The following events result in termination:

...death of the claimant;

...blindness or disability ceases;

...benefits have been suspended for 12 months.

A written notice of intent to suspend, reduce or terminate benefit payments must be sent to claimant in advance of such action, except where:

...SSA has factual information confirming claimant's death;

...amendments to Federal law or an increase in benefits payable under Federal law require automatic suspension, reduction or termination of benefits;

...clerical or mechanical error has been made in a decision;

...the facts indicating such action were supplied by the claimant, there are no conflicting facts, and the facts are complete.

It is the last exception that has concerned advocates and lawyers because of the potential for violation of claimant's rights. It is not clear at the time of writing how SSA personnel at the District Office level are interpreting this phrase. The best protection, of course, for a claimant who disagrees with this or any determination of the SSA, is to file a request for an appeal. Once he does that, if the issue is that of reduction, suspension or termination of benefits, his benefits can be restored, pending the outcome of the hearing. This issue is discussed in detail in the Chapter on The Appeals Process.

Overpayments and Underpayments

Overpayments and underpayments occur when the benefit payments which claimant has been receiving were incorrectly figured. The amount of the overpayment/underpayment is the difference between what the benefit payment level should have been, and the payments actually received by the claimant.

Because of the low level of benefit payments, it is obvious that great hardship can occur when payments are not correctly computed. This hardship would be in the past for claimants who have been underpaid, but for claimants who have been overpaid, the process of collecting the overpayments can put the claimant in truly dire straits. Fortunately, there is a provision for waiving recovery of the overpayment. Before looking at the waiver provision, it is important to understand the difference in how underpayments and overpayments are handled.

Underpayments

There is a total limit on underpayments. It cannot exceed an amount equal to the difference between the amount which should have been paid over the past 12 months and the amount that was actually paid during that period of time.

Underpayments can be paid to the claimant in a separate payment, or by increasing the amount of his monthly payment. If

claimant has overpayments not yet paid, the underpayment is offset against that overpayment.

If claimant is dead, the underpayment can be paid only to his surviving spouse (if not separated for six months prior to death).

Overpayments

There is no limit on the amount of overpayments to be recovered.

Certain actions are not overpayments:

...presumptive disability: payment made for up to 3 months is not an overpayment if claimant is not eligible because he is not disabled; such payment is an overpayment if claimant is not eligible because of some other eligibility factor;

...penalty: the imposition of a penalty is not considered an adjustment of an overpayment, and is imposed only against any amount due the penalized claimant.

Recovery of an overpayment can be accomplished by either a refund or an adjustment of future benefit payments.

A refund must be made in every case in which the overpayment is identifiable as part, or all, of the amount of claimant's non-excluded resources. It can also be made in other cases, when claimant so desires, and can be made by someone else on behalf of claimant.

An adjustment of future benefit payments simply means that the claimant and/or his eligible spouse would have their monthly benefit payments reduced by the amount of the overpayment. If the amount is fairly large, it would be possible to spread the overpayment

out over several months, but in no case longer than 24 months. SSA has standard minimum reduction amounts to recover overpayments which are:

Overpayment of less than $100	$ 5 per month
Over $100 but less than $200	10
Over $200 but less than $300	15
Over $300 but less than $400	20
Over $400 but less than $500	25
Over $500 but less than $600	30
Over $600 but less than $700	35
Over $700 but less than $800	40
Over $800 but less than $900	45
Over $900	50

[C.M. §19040]

If an individual has excluded income, SSA may increase the reduction to equal the amount of that income.

Waiver of Overpayments

Overpayments can be waived, but claimant must first prove that he was without fault in causing the overpayment. That decision rests on a consideration of several factors, such as:

...the claimant's understanding of reporting requirements;

...knowledge of the occurrence of events that should have been reported;

...ability to comply with the reporting requirements (eg. age, comprehension, memory, physical and mental condition);

...an incorrect statement made by the individual which he knew or should have known was incorrect;

...acceptance of a payment which the individual knew or could have known was incorrect.

If claimant can prove that he is without fault, he still must prove that recovery would have one of the following results:

...defeat the purpose of SSI, or

...be against equity or good conscience, or

...impede efficient administration due to the small amount involved.

To prove that recovery would defeat the purposes of SSI, is to show that it would deprive the person of income and resources needed for his own ordinary and necessary living expenses. Since the level of payment for SSI is supposedly based on a poverty level, it should be appropriate to argue that lowering that amount would result in deprivation for the claimant.

If that argument doesn't work, then move to the next one concerning equity or good conscience. When a person because of a notice that such a payment would be made, or by reason of the incorrect payment, relinquished a valuable right or changed his position for the worse, recovery would then be against good conscience.

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42 U.S.C.A. §1383(c)
20 C.F.R. §416.1401-1595

CHAPTER 14

THE APPEALS PROCESS

Overview

The appeals process provides an official opportunity for a claimant to dispute actions taken by the Social Security Administration. There are three levels of administrative review:

...reconsideration;

...administrative hearing;

...Appeals Council review.

Court review is also possible, but this Chapter will not deal with that issue.

The appeals process is essentially the same for SSI claimants as for OASDI claimants. The major difference comes about because of the decision in Goldberg v. Kelly, which found that welfare benefits cannot be suspended, reduced or terminated without due notice and without a hearing.

In the OASDI program, SSA has the policy of taking the action, and then, if the claimant so desires, he can utilize the appeals process to get those benefits restored, and be paid retroactively. With the backlog of cases, it is not unusual for there to be a six months wait for an administrative hearing. The entire process can take as long as two or three years.

In the SSI program, because it is a welfare program, Goldberg v. Kelly will apply. Thus in cases involving suspension, reduction, or termination of benefits claimants must be given due notice and offered a hearing. In order to cut down the time that SSA might be stuck with payments which realistically would be difficult to recover, SSA has made two basic changes in post-eligibility redeterminations, involving reduction, suspension or termination of benefits:

> ...for medical issues, the claimant skips the reconsideration level entirely and goes directly to the administrative hearing;
>
> ...for non-medical issues, claimant is offered a formal conference at the reconsideration level.

As of January 1, 1975, 40,000 appeals had been filed in the SSI program. However, because most of them occurred rather late in the year, there is no body of experience upon which to draw. Thus the experience with the appeals process in OASDI will be utilized in this Chapter. Note that 80 to 85% of the appeals in OASDI are on the disability issue. Because the standards for disability are identical in the two programs, it is anticipated that a large volume will be generated around that issue. However, since the SSI program is so much more complex because of the "means test", it is likely that there will be a larger volume of non-disability issues that will go to appeal.

Note that there must be a written decision before claimant can file a request for an appeal, and such a request must be in writing. It must be filed within 30 days after claimant receives the written notice, which SSA usually determines to be 35 days after the date on the notice. If claimant does not file for appeal within that period of time, the decision becomes final. The time limit can be waived for good cause. The stringent time limit of 30 days compares unfavorably with the six months allowed in the OASDI program.

The experience under OASDI is that only about 25% of the claimants denied benefits bothers to start that first step. Obviously it is important to tell claimants about that right, and to urge they avail themselves of it.

This Chapter will be devoted to examining in greater detail the following:

...which issues can be appealed;

...the right to representation;

...the reconsideration level;

...the hearing level;

...the Appeals Council level.

Advocate Tip

...inform community groups about the appeals process;

...urge claimants to request an appeal;

...offer to represent claimants in that process.

What Issues Can Be Appealed

The decision, in order to be appealable, must be what SSA defines as an "initial determination". An initial determination includes not only a decision on an initial application (an initial claims determination), but also a decision after the claimant has been officially declared eligible for benefits (a post-eligibility redetermination).

This difference becomes significant only in relation to Goldberg v. Kelly, as discussed previously.

The list of actions considered "initial determinations" in the Claims Manual are as follows:

...payment through a representative payee, rather than directly to the beneficiary (Exception: drug addicts and alcoholics--they must have payee);

...disallowance for failure to submit evidence;

...denial of request for withdrawal of an application;

...denial of request for cancellation of a "request for withdrawal" of an application;

...any issue relating to claimant's age, disability or blindness;

...the amount of the SSI benefit payment;

...residency, citizenship, or alien status;

...claimant's income, i.e., what constitutes income and exclusions;

...claimant's resources;

...marital relationship of an individual and spouse;

...living arrangements;

...failure to file for or pursue benefits under other programs;

...claimant's status as a child;

...failure to accept vocational rehabilitation services;

...whether a person is an inmate of a public institution;

...whether claimant is a patient in a Title XIX facility;

...whether a claimant is a drug addict or alcoholic and is complying with treatment requirements.

Those issues which are not subject to appeal:

...selection of representative payee;

...disposition of informal request for payment (informal disallowance);

...eligibility for emergency advance payment;

...presumptive disability payment.

[C.M. §13687]

The Right to Representation

A claimant has a right to have someone represent him in his dealings with the Social Security Administration. Although representation is important at any time, it becomes critical during the appeals process.

In examining the experience in OASDI, no data is systematically collected which deals with the issue of representation. However, a study* was done on information collected through the years 1965-69 with some rather interesting results. Of the claimants who were denied benefits and who appealed to the administrative hearing level, only about one-third had representation from anyone--an attorney, a friend, a relative, or a trained lay advocate. The impact of such representation is revealed in the following figures for favorable decisions:

...the claimant alone won in 38.8% of the cases;

...the claimant with a non-lawyer (relative, friend, trained lay advocate) won in 48.5% of the cases;

...the claimant with a lawyer won in 54% of the cases.

It is clear from the above statistics that representation definitely does make a difference.

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* Rock, Michael H. An Evaluation of the SSA Appeals Process, Report No. 7. DHEW, Social Security Administration Operations Research Staft, April 15. 1970.

As to who can represent, the rules are as follows:

> ...a lawyer in good standing and admitted to practice in any jurisdiction of the United States;
>
> ...any other person who is of "good character, in good repute and possessed of the necessary qualifications to enable him to render such claimant valuable service."

Whenever a representative is not an attorney, the claimant must provide the Administration with written notice of his appointment signed by both the claimant and the representative.

Both attorney and non-attorney representatives may be paid fees for their services in representing claimants. A representative seeking such a fee must file a written petition at any Social Security office. The amount of the fee is governed by such factors as the services performed and the complexity of the case.

To aid non-lawyers in representing claimants during the appeals process a handbook and film have been developed by our office under a grant from the Administration on Aging through the National Paralegal Institute. The title of the film is: "Paralegal Advocacy: Client Representation at a Social Security Administrative Hearing". The title of the Handbook is: Representation at a Social Security Hearing: Focus on Disability. Both can be secured from:

National Paralegal Institute
2000 P Street, N.W., 6th Floor
Washington, D.C. 20036

Reconsideration

Reconsideration is the first step in the appeals process and must be gone through in order to reach the administrative hearing level. Exception: cases involving a post-eligibility redetermination of a medical issue go directly to an administrative hearing.

In order to understand the reconsideration level, it is important to understand:

...the procedures used by the SSA;

...how SSA chooses the procedures;

...the claimant's options.

The Procedures

The three procedures used by SSA are:

...case review;

...informal conference;

...formal conference.

Case review is the basic reconsideration procedure. All the evidence in the file is reviewed, plus any new evidence produced by the claimant/representative, and a decision is made based on an evaluation of that evidence. Case review is the only procedure used in OASDI cases, and for reasons of time and money, SSA prefers to utilize this procedure, whenever legally possible.

Informal conference consists of all the procedures utilized in the case review process. In addition it provides an opportunity for the claimant/representative to appear in person before SSA personnel, preferably someone not involved in the original decision-making process. Oral testimony is taken, and the claimant has the right to bring witnesses favorable to his case. Equally important the claimant/representative has the right to review evidence in the file.

The formal conference consists of the procedures specified for the informal conference, plus the opportunity for claimant or his representative to subpoena and cross-examine witnesses who have given evidence against claimant.

The formal conference is conducted in the District Office by a decision-maker who has had no prior involvement in the initial determination. The role of the decision-maker is similar to that of a Hearing Examiner or Administrative Law Judge at an administrative hearing. A transcript of the hearing is not required, but a written summary is made, which can be made available to the claimant and his representative.

There are time limits involved in both conferences. The claimant must receive notice of the conference ten days prior to holding it, and the conference must be held within 15 days from the request for such a conference.

Choosing the Procedure

The Goldberg vs. Kelly decision plays a prominent role in deciding what procedures SSA will utilize in a case.

In a case involving Goldberg vs. Kelly rights, that is, one in which benefits are being suspended, reduced or terminated, a formal conference must be offered. (Remember that if a medical issue is involved the reconsideration step is skipped and the claimant goes directly to an administrative hearing.)

In a case which does not involve Goldberg vs. Kelly rights, the options differ depending on whether the issue is medical or non-medical:

> ...if a medical issue is involved, a case review is conducted by the State Agency Disability Determination Unit. At the option of the State Agency, an informal conference may be offered claimant. The latest information is that this is not happening.
>
> ...if a non-medical issue is involved, a case review is conducted by the District Office. An informal conference may be held at the request of the claimant.

The Claimant's Options

Claimant's options at the reconsideration level are considerably broadened under SSI as compared to OASDI. Instead of just a paper review, claimant, at least in most instances, has the additional option of appearing in person and having an opportunity to present his case. The advantage to the claimant is obvious, and

this advantage is enhanced when a knowledgeable advocate is also present.

That appearing in person does have impact on the reversal rate is apparent when looking at the statistics on disability cases appealed in 1972. Reversal rate at the reconsideration level was 37%, whereas reversal rate at the administrative hearing level was about 50%.

There is relatively scant experience within the SSI program as yet on the use of the informal conference at the reconsideration level. However, if it is to be utilized, the same careful planning which goes into preparation for the administrative hearing should go on for the informal conference. One note of caution: the informal conference does not allow for the subpoena of witnesses, and their cross-examination, so if the issue is evidence given by someone other than the claimant, it probably would be better not to use the informal conference. Both the administrative hearing and the formal conference do provide for such a right.

Even though there are broadened options for the claimant, whether those options are utilized depends on the claimant's understanding of those options. For example, in looking at the experiences of some District Offices, it is clear that claimants are almost uniformly waiving their Goldberg vs. Kelly rights through a waiver form which they sign. Upon closer examination, it appears that DO

personnel are frightening claimants by overstressing the fact that SSA will try to recoup any overpayments that are made in the event that claimant loses. There is little exploration of the particular claimant's situation, and whether it would be to the claimant's advantage to take that chance. For example, if claimant loses and is terminated, he might be judgment proof, and thus would lose nothing by exercising those rights. The point is that the claimant should understand the options in light of his particular situation. The role of the advocate should be to help claimant to make an informed decision.

Advocate Tip

...study the reconsideration process;

...study the recoupment procedures;

...explore claimant's situation;

...spell out the options so claimant can make his own decision;

...represent claimant with same careful planning as for an administrative hearing.

Administrative Hearing

If claimant loses at the reconsideration level, and wishes to continue with his appeal, he must file a request for an administrative hearing within 30 days (35 days from notice date) after receiving the written decision. (This compares unfavorably with the 6 months time allowed under the OASDI program.) That continuing with the appeals process is to the claimant's advantage is obvious from a look at the reversal rate. In the OASDI program this runs to about 45-50%, which is quite high for administrative hearings.

In order to understand the administrative hearing process, and be able to utilize it to the fullest, it is important to look at the following aspects:

...the Bureau of Hearings and Appeals;

...conduct of the hearing;

...the role of the advocate;

...the meaning of the high reversal rate.

The Bureau of Hearings and Appeals

The administrative hearing level is the first time that the appeals process moves out of the District Office/State Agency jurisdiction and moves into a relatively autonomous body of the Social Security Administration, called the Bureau of Hearings and Appeals.

The Secretary of HEW has delegated to the Bureau, its Appeals Council, and its administrative law judges/hearing examiners, all the duties, powers, and functions relating to holding hearings and rendering decisions.

The Bureau prides itself on its autonomy, and if the high reversal rate has any significance, that autonomy is real. The administrative law judges are bound only by the statute and regulations, rather than by the mass of interpretations, such as the Disability Insurance Letters, and the Claims Manual, which bind decisions at the lower levels.

The administrative law judges must be attorneys who have several years of experience; their behavior is governed both by the Administrative Procedure Act and by the Social Security statute. For the SSI program a new class of Hearing Examiners has been created. Although they must be attorneys, the years of experience required is less than for the administrative law judges, and their salary range, although still substantial, is lower. The hiring of the hearing examiners has proceeded very slowly, so SSI appeals are being handled by the administrative law judges. Thus it is not clear whether the new class will be second-class, or whether there will be any difference in performance. Since the hearings are to be conducted in the same manner, and since the examiners will be

housed with the administrative law judges, there should not be any difference. The main problem is that the entire group will be new to the program. Whether the effect will result in there being more or less vulnerable to persuasion remains to be seen.

Note that if claimants are filing for appeals on both OASDI and SSI cases, the cases are consolidated, and the administrative law judges will hear the issues in both cases.

Conduct of the Hearing

The conduct of the hearing is governed by the Administrative Procedure Act, which allows the judge wide latitude in running the hearing. Although the hearings are often referred to as informal, in reality they are conducted in a rather formal and paternalistic manner.

It is the role of the judge that gives the hearing its unique quality. The hearing is non-adversary; that is, the Social Security Administration is never represented, and, as already mentioned, the claimant is represented only about a third of the time. Thus the judge assumes, in most instances, three roles:

...acting as the claimant's representative;

...acting as the Social Security representative;

...acting as the judge and making the decision based on the evidence secured in his other two roles.

There has been a good deal of discussion both inside and outside the SSA about the problems presented in such a system, but as of this date, the system remains.

The strict rules of evidence that are applicable in a court of law do not apply. However, the claimant, witnesses and observers are introduced for the record, and testimony is given under oath and recorded verbatim.

The persons present at a minimum are the judge, the judge's assistant who records the hearing, and the claimant. Claimant can, of course, waive his right to be present, and the judge makes his decision based on the evidence in the file. (As already noted, this decreases claimant's chances of winning.) Other persons can be present; for example, in a disability case the judge might request a vocational expert and/or a medical advisor. Neither of these two persons will have seen the claimant, but will be used to help the judge evaluate the evidence in the file. Claimant or his representative has the right to cross-examine such witnesses, and may request that the judge subpoena witnesses. However, the judge reserves the right to make that decision. Claimant can, of course, produce witnesses to bolster his case.

Concerning the judge's decision, this is usually not announced at the end of the hearing. Under SSI, the judge must give

claimant a written decision within 90 days of the date of the written request for a hearing. Exception: disability cases have no time limit.

It is quite clear to anyone who has been at such a hearing that the judge is in complete control, and it would be well for anyone who plans to represent a claimant to understand and accept that fact.

Role of the Advocate

As is clear from the statistics presented previously, having an advocate increases the claimant's chances of winning.

The role of the advocate is, of course, constrained by the conduct of the hearing and the judge's role, as described above. The advocate must balance his duty to present the strongest case possible for his claimant with the corresponding duty of not alienating the judge. For example, there are obvious advantages to examining the claimant first; however, most judges will insist on examining claimant first. It is useful to make that request initially but it is probably not helpful to keep pressing it after being turned down.

The important point is to present in as orderly a fashion as possible the most advantageous evidence on behalf of the claimant. Most of the work is done prior to the hearing, both in developing documentation needed for the case, and in carefully preparing claimant

for the questions that will be asked in the hearing. The better prepared the advocate and the claimant, the better the chances of winning.

An advocate should prepare a written outline of the major facts and the manner of presentation prior to the hearing. Some also write a brief before the hearing to give to the judge at the end of the hearing. Another option is to request that the record be left open for a few days in order to file a brief. This gives the advocate an opportunity to highlight the major issues and to reinforce the points made on behalf of the claimant at the hearing.

The Meaning of the High Reversal Rate

There has been a good deal of speculation about the meaning of the high reversal rate at the administrative hearing level. An obvious conclusion is that the initial determination is too narrow and restrictive, and is basically anti-claimant. Other possibilities have been advanced and should at least be considered:

> ...the judges are not bound by the interpretive rules used in making the initial decision, and thus come to a different conclusion;
>
> ...in disability cases, the judges are the first decision-makers to actually see the claimant;
>
> ...in disability cases, additional medical evidence, particularly from specialists, is often secured;
>
> ...in disability cases, the time lapse between date of the original decision and the hearing might be long enough for claimant's condition to have worsened.

Keep in mind that the bulk of the appeals (80-85%) are on the issue of disability. As already discussed in the Chapter on Disability, the definition of disability includes an abstract concept of work capacity, which hinges on the way a claimant looks, his demeanor, his motivation, his general credibility. However, such attributes as credibility are also important in cases not involving disability.

In analyzing the reversal statistics*, there is some variation, according to region, ranging from 51.2% reversal rate in region 9 (San Francisco) to 40.4% in region 2 (New York). However,

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* Social Security Disability and Mass Justice, Robert G. Dixon, Jr., Praeger Publishers, c. 1973, pages 76-9.

that regional rate is not as significant as the range revealed when looking at the performance of individual administrative law judges. In 1971 a study showed that about 61% of the judges had a reversal rate of between 36 to 55 percent; 8 percent were strongly pro-claimant with rates between 66 and 80%; 10 percent were clearly anti-claimant with rates between 21 and 30%.

As is true in all systems of adjudication, one can generalize on trends, but it is still possible to get a judge who is biased either for or against the claimant. If an advocate should get a judge who is biased against the claimant, it would be well to try to work for that judge being disqualified, or at least to raise that issue so that the record can be protected on appeal.

Whatever the reason, it is clear that the claimant has a good chance of winning at the administrative hearing level and that the chances are even better when represented by a competent advocate.

The Appeals Council

If the claimant does not win at the administrative hearing level, the next step is to file a request for a review by the Appeals Council. This must be done within 30 days of the receipt of the administrative law judge's decision (35 days from the date on the notice). The time limit is 6 months for OASDI.

The Appeals Council is the last step in the administrative review process. The Council, as with the administrative law judges, is part of the Bureau of Hearings and Appeals. It sits in Baltimore, but recently regional appeals councils were authorized for Philadelphia, Atlanta, Chicago, Dallas and San Francisco. The Council consists of a chairman, a vice chairman and 11 members. However, it usually operates in panels of two members for each case. One of the two panelists writes an opinion, and if the second concurs, it becomes an Appeals Council decision.

Cases come to the Council in the following ways:

...claimants appealing an administrative law judge decision;

...a case certified to the Council by an administrative law judge who declines to decide a case;

...on its own motion, a case pending before a hearing examiner;

...on its own motion, a case already decided by an administrative law judge, which is not being appealed because the decision was favorable to the claimant.

If the Council, on its own motion, moves a case pending before an administrative law judge, the Council must hold a regular administrative hearing. However, if the Council is merely reviewing the decision of the judge, the review is based on the evidence already in the record, including the verbatim hearing transcript of the hearing. Additional evidence can be submitted by the claimant/representative, and he has the right to appear personally and argue the case. In practice, the claimant/representative does not make an appearance and a decision is made on the record.

With the cases that are essentially a review of the judge's decision, the Council has the option to affirm or reverse the administrative law judge's decision, or remand the case back to the administrative law judge. To remand a case means to send it back for additional development and further proceedings before making a decision. The administrative law judge will either write a new decision or recommend a decision to the Appeals Council for its final consideration.

There are three differences between the Appeals Council review and an administrative hearing:

> ...only decisions unfavorable to the claimant are reviewed by the administrative law judge, whereas the Appeals Council can review decisions favorable to the claimant;

...only the claimant can request an administrative hearing, whereas the Appeals Council, on its own motion, can review a decision;

...all requests for review must be granted by administrative law judges, whereas the Appeals Council reserves the right to deny the request for a review.

The most striking difference is the right of the Appeals Council to deny a claimant's request for review. In fact, the Appeals Council reviews very few cases; for example, in 1970 less than 20 percent of the cases processed were accepted for review (2,149 out of 11,094 cases). Since the decisions are only in terms of whether the original decision was reversed or affirmed, and the Appeals Council reviews favorable, as well as unfavorable decisions, it is not possible to determine if there is a pro or anti-claimant bias on the Council. In the same year, 1970, 801 cases were "on own motion" cases. The decision reversal rate was as follows: affirmed in 769 cases; reversed in 1,380 cases.

Although the Appeals Council does not appear to be a very good resource for the claimant, nevertheless this step must be gone through in order to exhaust all administrative remedies, in the event claimant wants to seek remedy in the courts.

The action of the Appeals Council is final and binding, unless claimant within 60 days after receipt of the decision, gets an attorney to appeal to the U.S. District Court. Time limits, of course, can be waived for <u>good cause</u>.